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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

Contents

Federal Register

Vol. 57, No. 169

Monday, August 31, 1992

Agricultural Marketing Service
RULES
Milk marketing orders:
Tennessee, 39351
PROPOSED RULES
Lemons grown in California and Arizona, 39368
NOTICES
Meetings:
Burley Tobacco Advisory Committee, 39386
National Organic Standards Board, 39386

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Rural Electrification Administration

Air Force Department
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 39396

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Taxpaid distilled spirits used in manufacturing products unfit for beverage use, 39528
NOTICES
Agency information collection activities under OMB review, 39564

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ports designation—
Boston, MA, 39352

Army Department
NOTICES
Meetings:
Science Board, 39396

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Census Bureau
NOTICES
Surveys, determinations, etc.:
Federal government agencies manufacturers' shipments; value, 39387

Coast Guard
RULES
Drawbridge operations:
Florida, 39360
Ports and waterways safety:
Narragansett Bay, RI; safety zone, 39360
Regattas and marine parades:
Tall Stacks 1992, 39359
PROPOSED RULES
Drawbridge operations:
Florida, 39381

Commerce Department
See Census Bureau
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions; correction, 39421

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 39395

Conservation and Renewable Energy Office
NOTICES
Grant and cooperative agreement awards:
New England Governors' Conference, Inc., 39399
Residential buildings, new non-Federal; voluntary energy conservation performance standards, 39424

Defense Department
See Air Force Department
See Army Department
See Defense Information Systems Agency
RULES
Federal Acquisition Regulation (FAR):
Cost accounting standards, 39586
NOTICES
Agency information collection activities under OMB review, 39396
Federal Acquisition Regulation (FAR):
Compact disc-read only memory (CD-ROM) availability, 39595
Meetings:
Service Academy Athletic Programs Defense Advisory Committee, 39396

Defense Information Systems Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership; correction, 39421

Energy Department
See Conservation and Renewable Energy Office
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Grant and cooperative agreement awards:
National Academy of Sciences, 39397
Grants and cooperative agreements; availability, etc.:
Improved electrical power generating systems for geothermal applications; economic benefits demonstration, 39396

Engraving and Printing Bureau
NOTICES
Privacy Act:
Systems of records, 39418

Environmental Protection Agency
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Monitor Labs Model 9841 Nitrogen Oxides Analyzer, 39401
Drinking water:
Public water supply supervision program—
Iowa, 39401
Toxic and hazardous substances control:
Asbestos—
National Directory of AHERA Accredited Courses; availability, 39401
Water pollution control:
Clean Water Act—
Class I and II administrative penalty assessments, 39402

Export Administration Bureau
NOTICES
Meetings:
Militarily Critical Technologies List Implementation Technical Advisory Committee, 39388

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 39371
Boeing, 39372
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Certificated aircraft software; information and guidance, 39415
Airport noise compatibility program:
Ryan Airfield, AZ, 39416
Tucson International Airport, AZ, 39417
Meetings:
Aviation Rulemaking Advisory Committee, 39418

Federal Communications Commission
RULES
Radio stations; table of assignments:
American Samoa, 39362
Arkansas, 39362
Georgia, 39363
Mississippi et al., 39363
Virginia et al., 39363
Television stations; table of assignments:
Washington, 39364
PROPOSED RULES
Radio stations; table of assignments:
Arkansas, 39382
Iowa, 39383
Michigan, 39383
Minnesota, 39384
Mississippi, 39384
Wisconsin, 39384

Federal Deposit Insurance Corporation
NOTICES
Powers of attorney; issuance, 39402

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Louisiana Natural Resources Department, 39398
Oklahoma Corporation Commission, 39398
Texas Railroad Commission, 39398
Applications, hearings, determinations, etc.:
Florida Gas Transmission Co., 39399
Great Lakes Gas Transmission Limited Partnership, 39399
Texas Eastern Transmission Corp., 39399

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Hazardous materials transportation; highway routing, 39522
Hearings, 39533

Federal Maritime Commission
NOTICES
Agreements filed, etc., 39403

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Acquisition Corp. et al., 39403
Commercial Bancshares, Inc. Employee Stock Ownership Trust, et al., 39403

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Mississippi, 39388
Avondale Enterprises, Inc.; shipbuilding, 39388

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Cost accounting standards, 39586
NOTICES
Federal Acquisition Regulation (FAR):
Compact disc-read only memory (CD-ROM) availability, 39595

Health and Human Services Department
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations, 39404

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Indian HOME program, 39406

Interior Department
See Minerals Management Service

Internal Revenue Service
RULES
Excise taxes:
Gasoline
Correction, 39421

Income taxes:
Pre-change attributes; carryovers; CFR correction, 39359
PROPOSED RULES
Income taxes:
Accelerated cost recovery system; general asset accounts, 39374
Hearing, 39379
Procedure and administration:
Federal Crop Insurance Act; policyholders and reinsured companies employer identification number FCIC requirement, 39379

International Trade Administration
NOTICES
Antidumping:
Large power transformers from—
France, 39389
Italy, 39389
Pure magnesium from Canada, 39390
Steel wire rope from Korea, 39390
Countervailing duties:
Cotton shop towels from Peru, 39391
Industrial phosphoric acid from Israel, 39391
Pure and alloy magnesium from Canada, 39392
Export trade certificates of review, 39393
Applications, hearings, determinations, etc.:
Boston College et al., 39394

Interstate Commerce Commission
RULES
Inspection of records; CFR Part removed, 39364
PROPOSED RULES
Practice and procedure:
Railroad consolidation procedures—
Class exemption for transactions within corporate family, 39385
"Significant" transactions, definition and requirements, 39385
NOTICES
Agency information collection activities under OMB review, 39406
Railroad operation, acquisition, construction, etc.:
Atchison, Topeka & Santa Fe Railway Co., 39406

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Oil spill prevention and response; offshore facilities including State submerged lands and pipelines
Correction, 39421

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Cost accounting standards, 39586
NOTICES
Federal Acquisition Regulation (FAR):
Compact disc-read only memory (CD-ROM) availability, 39595

National Institutes of Health
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Adeno-associated virus (AAV) vectors for gene therapy, 39405
Vectors for gene therapy treatment of AIDS, 39405

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
South Atlantic snapper-grouper, 39365

Nuclear Regulatory Commission
RULES
Fee schedules; revision
Correction, 39421
Production and utilization facilities; domestic licensing:
Nuclear licensees; regulatory burden reduction, 39353
PROPOSED RULES
Reactor site criteria:
Nuclear power plants; seismic and geologic siting criteria; Appendix A revision; meeting, 39371
NOTICES
Environmental statements; availability, etc.:
Detroit Edison Co., 39407
Applications, hearings, determinations, etc.:
General Electric Co., 39408

Pennsylvania Avenue Development Corporation
NOTICES
Meetings; Sunshine Act, 39420

Personnel Management Office
NOTICES
Health benefits, Federal employees:
Medically underserved areas, 39409

Public Health Service
See National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Federal regulatory review; gas pipeline safety standards, 39572

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Arkansas Electric Cooperative Corp., 39386
Oglethorpe Power Corp., 39387

Securities and Exchange Commission
RULES
Securities:
Fees; remittance to lockbox depository, 39358
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 39409
National Association of Securities Dealers, Inc., 39411
Applications, hearings, determinations, etc.:
Public utility holding company filing, 39411

State Justice Institute
NOTICES
Grants, cooperative agreements, and contracts; guidelines, 39486

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration

See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 39413
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 39413
Hearings, etc.—
Bellair, Inc., 39414
International cargo rate flexibility level:
Standard foreign fare level—
Index adjustment factors, 39414
Meetings:
Aircraft Accessibility Federal Advisory Committee, 39414

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Engraving and Printing Bureau
See Internal Revenue Service
Agency information collection activities under OMB review, 39564

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Masterworks from Musee Des Beaux-Arts, Lille, 39419

Western Area Power Administration
NOTICES
Transmission rate adjustments:
Parker-Davis Project, AZ, 39400

Separate Parts In This Issue

Part II
Department of Energy, Office of Conservation and Renewable Energy, 39424

Part III
State Justice Institute, 39486

Part IV
Department of Transportation, Federal Highway Administration, 39522

Part V
Department of the Treasury, Alcohol, Tobacco and Firearms Bureau, 39536

Part VI
Department of Transportation, Research and Special Administration, 39572

Part VII
Department of Defense, General Services Administration, and National Aeronautics and Space Administration, 39586

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1098.....39351
Proposed Rules:
910.....39368

9 CFR
91.....39352

10 CFR
20.....39353
50.....39353
Proposed Rules:
100.....39371
171.....39421

14 CFR
Proposed Rules:
39 (2 documents).....39371, 39372

17 CFR
202.....39358

26 CFR
1.....39359
48.....39421
Proposed Rules:
1 (2 documents).....39374, 39379
301.....39379
602.....39379

27 CFR
Proposed Rules:
17.....39528
19.....39528
70.....39528
170.....39528
194.....39528
197.....39528
250.....39528

30 CFR
Proposed Rules:
250.....39421

33 CFR
100.....39359
117.....39360
165.....39360
Proposed Rules:
117.....39381

47 CFR
73 (6 documents).....39362-39364
Proposed Rules:
73 (6 documents).....39382-39384

48 CFR
15.....39586
30.....39586
31.....39586
52.....39586

49 CFR
1020.....39364
Proposed Rules:
192.....39572
397 (2 documents).....39522, 39533
1180 (2 documents).....39385

50 CFR
646.....39365

Rules and Regulations

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1098

[DA-92-09]

Milk in the Nashville, Tennessee Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends portions of the pool plant definition of the Nashville, Tennessee milk order. The suspension allows a distributing plant located in the Nashville, Tennessee marketing area, but having a greater volume of its fluid milk sales in the Georgia marketing area than in the Nashville area, to stay regulated under the Nashville, Tennessee milk order. The suspension was requested by Malone & Hyde, Inc. (Malone), a proprietary handler. The suspension is needed to avoid the shifting of regulation of the Malone plant based on a plurality of sales volume, which would cause disorderly marketing by adversely affecting its ability to procure milk.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 6, 1992; published May 12, 1992; (57 FR 20210).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action should obviate the need for Malone & Hyde, Inc. to engage in inefficient movement of packaged milk in order to keep its plant regulated under the Nashville, Tennessee order.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity * * *.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nashville, Tennessee marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 12, 1992, (57 FR 20210) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunities to file written data, views, and arguments thereon. Several comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that beginning August 1, 1992, for an indefinite period, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1098.7(d)(2)(iii), the words "so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location."

Statement of Consideration

This action suspends portions of the pool plant definition of the Nashville, Tennessee, milk order for an indefinite period. The suspension allows a distributing plant located in the Nashville marketing area but having a plurality of its fluid milk sales in a different marketing area to stay regulated by the Nashville order.

The suspension was requested by Malone & Hyde, Inc. (Malone), a proprietary handler operating a distributing plant that is regulated under the Nashville order. Under the provisions of that order, the Malone plant would be regulated by the Georgia milk order after the third consecutive month in which it has greater route disposition of fluid milk products from its plant in the Georgia marketing area. Because of a change in its sales pattern, the Malone plant could become regulated under the Georgia order.

Because of a substantial difference in the Class I utilizations under the two orders, blend prices to Malone's producers would be substantially lower if the plant becomes regulated under the Georgia order. Since the plant would still be located in the Nashville procurement area, it would have a price disadvantage in competing for milk supplies with nearby plants under the Nashville order where the blend prices would be higher.

Four comments in opposition to the suspension were filed by proprietary handlers and one comment in opposition was filed by a cooperative association and one by an association for Georgia dairy farmers. The opponents argue that Malone should be pooled in Georgia so that producers supplying that market would realize the benefit of sharing in Malone's Class I sales. They contend that Malone always has the option of paying premiums to its Tennessee producers in order to remain competitive in the procurement area. Also, they contend that blend prices in the Georgia order would increase and blend prices in the Nashville, Tennessee

order would decrease if Malone became regulated by the Georgia milk order.

The Malone plant's sales area extends throughout the South. The plant does not have a substantial proportion of its sales volume associated with any particular Federal order market. It does have greater sales in the Nashville, Memphis, Alabama-West Florida, and Georgia markets than in other markets. The market where it has a plurality of its sales can easily shift from month to month.

A "lock-in" provision was adopted for the Nashville market to better effect a uniform minimum order price to producers for all the distributing plants located in the Nashville marketing area.

The reason the lock-in provisions may result in the plant shifting to the Georgia pool is that it excludes a plant that would have a higher Class I price if regulated by another order. The Georgia order Class I price is one-cent higher than the Nashville order Class I price at Nashville. It is this provision rather than the market of a plurality of its sales which could result in the plant shifting to the Georgia pool. Suspension of this price comparison provision will continue to effect the intent of the "lock-in" provision of the Nashville order.

Malone, in order to decrease its route disposition in the Georgia marketing area below that in the Nashville, Tennessee market, has arranged with another distributing plant to receive packaged fluid milk at the other handler's plant for distribution in the Georgia marketing area. This distribution is not considered "route disposition" from the Malone plant. This arrangement (plant transfers) is very costly to Malone. The suspension would obviate this wasteful marketing practice.

Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should obviate the need for Malone & Hyde, Inc. to engage in inefficient movements of packaged milk in order to keep its plant regulated under the Nashville, Tennessee order.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Several comments were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in **Federal Register**.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

It is therefore ordered, that the following provisions of the order (7 CFR part 1098) are hereby suspended for an indefinite period.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1098.7 [Suspended in part]

2. In § 1098.7(d)(2)(iii), the words "so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location" are suspended.

Dated: August 24, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–20887 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 91–134–2]

Ports Designated for Exportation of Animals; Boston, MA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding Boston, Massachusetts, to the list of ports designated as ports of embarkation, and by adding Logan International Airport as an export inspection facility, for miniature swine only, for the Boston port. This change will add a port through which miniature swine may be exported. For the exportation of miniature swine, Logan International Airport meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea M. Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14 lists ports designated as ports of embarkation.

In a document published in the **Federal Register** on May 7, 1992 (57 FR 19555–19556, Docket No. 91–134), we proposed to amend § 91.14 by adding Boston, Massachusetts, to the list of ports designated as ports of embarkation and by adding Logan International Airport as an export inspection facility, for miniature swine only, for the Boston port. We also proposed to add a definition for miniature swine in § 91.1.

Comments on the proposed rule were required to be received on or before July 6, 1992. We did not receive any comments before the close of the comment period. Therefore, based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Prior to the effective date of this document, there were no ports designated as ports of embarkation in Massachusetts. Livestock exporters in Massachusetts transported animals to John F. Kennedy Airport in New York to be exported. Of the approximately 50 exporters of miniature swine in Massachusetts, most would be considered small entities. This rule will give exporters of miniature swine in Massachusetts the option of using a closer export facility. Since the cost of

transporting the miniature swine to John F. Kennedy Airport is a small portion of the overall cost of exporting them, allowing use of Logan International Airport in Massachusetts will have minimal economic effect on the exporters. Further, since this action involves one type of animal, it is unlikely to have any significant effect on any entity involved in handling or transporting livestock.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d)

2. In § 91.1 a definition for "miniature swine" is added in alphabetical order to read as follows:

§ 91.1 Definitions.

* * * * *

Miniature swine. Swine bred and raised as pets or for laboratory testing purposes that do not weigh more than 100 pounds at maturity.

* * * * *

3. In § 91.14, paragraph (a) is amended by redesignating paragraphs (a)(7) through (a)(16) as paragraphs (a)(8) through (a)(17), respectively, and by adding a new paragraph (a)(7) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(7) *Massachusetts.* (i) Boston—airport only.

(A) Logan International Airport (miniature swine only), East Boston, Massachusetts 02128, (617) 565–4649.

* * * * *

Done in Washington, DC, this 26th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–20891 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 50

RIN 3150–AE30

Reducing the Regulatory Burden on Nuclear Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reduce the regulatory burden on nuclear licensees. This action reflects an initiative undertaken by the Commission in response to a Presidential memorandum requesting that selected Federal agencies review and modify regulations that would eliminate any unnecessary burden of governmental regulation and ensure that the regulated community is not subject to duplicative or inconsistent regulation. In that spirit, the NRC's Committee to Review Generic Requirements (CRGR) identified eight areas where regulations could be revised to reduce the regulatory burden on licensees without in any way reducing the protection for the public health and safety or the common defense and security. The final amendments address unnecessary regulatory requirements related to the frequency of reporting information, analysis of emergency core cooling systems for operating power reactors, and clarification and update of regulations affecting certain material licensees.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Nilsen, telephone (301) 492–3834 or Mr. Joseph J. Mate, telephone (301) 492–3795, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the President of the United States signed a memorandum addressed to selected Federal Agency Heads who are concerned with energy production and protection of the environment. The memorandum requested the addressees work together to streamline the regulatory process and ensure that the regulatory community is not subject to duplicative or inconsistent regulation.

On the same day, the President signed a second memorandum entitled "Reducing the Burden of Government Regulation." This memorandum, which was sent to all Federal agencies, set aside a 90-day period to review and evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden. At the end of the review period, agencies were to submit a written report indicating the regulatory changes recommended or made during the review period and the potential savings as a result of the changes.

In response to the Presidential memoranda, the Commission decided that it would be consistent with its policy to monitor the impact of complying with NRC regulations by its licensees to instruct its Committee to Review Generic Requirements (CRGR) to review existing NRC regulations to determine whether regulatory burdens can be reduced without in any way reducing the protection for the public health and safety and the common defense and security. In accomplishing their review, the CRGR drew upon previous studies and solicited comments from the public, other Federal agencies, and the Commission's staff. A **Federal Register** Notice was published on February 24, 1992 (57 FR 6299) seeking public comment in connection with the review, and a second **Federal Register** Notice on March 23, 1992 (57 FR 9985) discussed likely or possible candidates for action, based on CRGR's preliminary evaluation of comments. An associated

public meeting was held on March 27, 1992, in Bethesda, Maryland.

After completing their special review, the CRGR recommended revising the regulations in eight areas. The proposed revisions met the criteria for reducing the burden without in any way reducing the protection for public health and safety and common defense and security.

The Chairman of the NRC sent a report to the President of the United States on April 27, 1992, which summarized NRC's activities concerning the President's directive and advised the President that NRC would pursue the CRGR's recommendations expeditiously within the framework of the procedures and practices for rulemaking.

On June 1, 1992, in response to a memorandum from the President of the United States, dated April 29, 1992, the Commission directed the staff to strive to publish the proposed rule changes in the eight areas identified by the CRGR in the **Federal Register** for comment as soon as possible, but not later than June 15, 1992, with a view to issuing the final rules in the **Federal Register** no later than August 27, 1992. On June 18, 1992 (57 FR 27187), the NRC published the proposed rulemaking in the **Federal Register** for comment. The comment period expired on July 20, 1992.

Summary and Analysis of Public Comments

Thirty comment letters were received on the proposed rule and are available for public inspection, and copying for a fee, at the Commission's Public Document Room located at 2120 L street, NW. (Lower Level), Washington, DC. The comments on the proposed rule came from a variety of sources. These included private citizens, publicly-held corporations, citizens' groups, the armed forces, industry representatives, electric power companies or their representatives, and legal firms. Eleven significant points were raised by the commenters. Of the 30 comment letters received, 28 letters were favorable and 2 letters were partially opposed to the regulation changes. The comments and their resolutions are discussed below.

1. *Comment.* One commenter suggested that the Commission not only amend § 20.1906(b) concerning contamination monitoring, but also issue a statement that those licensees still operating under the old part 20 not be required to monitor packages for contamination that meet the conditions of § 20.1906(b).

Response. The NRC does not believe that the suggested change by the commenter is necessary because the amendment of § 20.1906(b) will make the subject contamination monitoring requirements of the new part 20 essentially the same as those contained in the existing part 20 (§ 20.205(b)(1)(iii) and (c)(1)).

2. *Comment.* One commenter opposed the rule on the basis that sealed sources routinely leak and, therefore, should not be excluded from monitoring.

The commenter cited an example where a driver and a truck were contaminated because of a failure to conduct a proper radiation sweep.

Response. The final rule does not exempt licensees from monitoring or surveying any packages with evidence of degradation of package integrity, including evidence of potential contamination. Likewise, this revision does not relax the preshipment requirements for monitoring of packages contained in 10 CFR part 71. The NRC does not have any evidence that supports the commenter's assertion that sealed sources routinely leak and, thus, the NRC believes that the requirements in place are sufficient to detect potential abnormal situations. No amount of regulation can, a priori, preclude all incidents involving leaking sources. However, these incidents can be dealt with through followup inspection and enforcement under the present regulatory scheme.

3. *Comment.* Several commenters addressed in general terms the need for the NRC to continue its efforts to reduce any unnecessary regulatory burden on licensees through amendments to 10 CFR chapter I.

Response. The NRC will continue its efforts to identify additional amendments that will provide for a reduction in regulatory burden while still assuring adequate protection of the public health and safety.

4. *Comment.* One commenter questioned the basis for exempting from external monitoring for radiation levels only nuclear material that was either in the form of a gas or in a special form since the external radiation levels are dependent upon radionuclides, quantity, shielding, and distance between radioactive material and the point of interest rather than material form.

Response. The NRC agrees with the commenter that the requirement to survey, upon receipt, the radiation levels on the package exterior should be based on the potential radiation hazard. Therefore, the requirement specified in 10 CFR 20.1906(b)(2) that monitoring of radiation levels be performed on labeled packages is being revised to delete the exemption that the radioactive material be in the form of a gas or in special form as defined in 10 CFR 71.4.

5. *Comment.* One commenter questioned whether the monitoring requirements were applicable for packages that show evidence of damage.

Response. The wording of 10 CFR 20.1906(b)(3) has been revised to indicate more clearly that packages with evidence of damage are to be monitored for both radioactive contamination and for radiation levels.

6. *Comment.* Several commenters requested that the proposed wording to 10 CFR 50.71(e)(4) concerning FSAR updates be revised to decouple the FSAR updates from the refueling cycle and that the 24-month requirement for updates is an unnecessary restriction.

Response. The proposed changes were not accepted. The majority of facility design changes reflected in an updated FSAR are effected during the refueling outage. The use of the refueling cycle interval provides for a current plant status document that is coordinated with plant changes. The wording of § 50.71(e)(4) is not restrictive to plants that will eventually increase their refueling cycle to 24 months.

7. *Comment.* Three electric utilities requested that the proposed wording in 10 CFR 50.36(a)(2) concerning radiological effluent reporting be revised to specify a particular date. One commenter suggested: "The report must be submitted as specified in § 50.4 prior to March 31 of each year."

Response. The wording of 10 CFR 50.36(a)(2) gives the licensee maximum flexibility for scheduling submission of radiological effluent reports with the only restriction being that the interval between reports must not exceed 12 months. The reporting requirements remain as proposed.

8. *Comment.* Two commenters suggested that the amendments indicate that the changes in reporting requirements of the new regulations take precedence over the existing license technical specifications or license conditions where there may be a conflict.

Response. The proposed amendments are generic and licensees may request administrative amendments to any conflicting license condition or technical specification as needed.

9. *Comment.* Two commenters suggested that NRC reconsider the need for licensees to submit 10 CFR 50.36a(2) effluent release reports and 10 CFR 50.59 reports concerning annual design changes. The commenters noted the requirement for these reports was issued before the Final Safety Analysis Reports were required to be updated periodically and before resident inspectors were assigned to all reactor sites. The

commenters also observed that these reports are now available on site for review by inspectors at any time and that most design changes are reflected in the FSARs. Further, the commenters did not believe that these reports are routinely reviewed by the NRC staff. The commenters believed that if the requirements to submit such a report were eliminated, there would be no impact on safety, the required evaluations could continue to be performed, and the reports would continue to be available for review. The commenters believed that the deletion of these requirements would contribute to significant increased savings by licensees.

Response. The consequence of eliminating the requirements for these reports requires significant additional assessment. Thus, the proposed revisions have not been modified in order not to delay the benefit of burden reduction. Although this proposal will not be addressed in the current rulemaking, these suggested revisions will be evaluated as part of an ongoing NRC effort.

10. *Comment.* One commenter questioned whether the changes in reporting frequency of facility changes under 10 CFR 50.59, FSAR updates, and radiological effluent reports would impair the ability of the NRC to review the information in a timely manner.

Response. The resident inspector program along with regional regulatory programs provide timely and in some cases day-by-day review of facility operations. The changes being made will not impair NRC's ability to review the information.

11. *Comment.* One commenter (Yankee Atomic Electric Co.) stated that the FSAR update changes discussed in Action Item 1 in the proposed rule and in Action Item 7 of this document emanated from a petition for rulemaking that they submitted to the NRC on February 9, 1990 (PRM 50–55). The notice of receipt for this petition was published in the **Federal Register** on May 3, 1990 (55 FR 18608). The petitioner originally requested that nuclear power plant licensees be allowed to file FSAR reports at periods greater than annually. They suggested that § 50.71(e)(4) be revised to read as follows: "Subsequent revisions shall be filed no later than 6 months after completion of each planned refueling outage for a licensee's facility. If two or more facilities share a common FSAR, the licensees shall designate the refueling outage schedule on one of the multiple facilities to establish the schedule for revisions of the common FSAR. The FSAR revisions shall reflect all changes up to a maximum of 6 months prior to the date of filing."

During the comment period on this proposed rule, Yankee Atomic Electric Co. stated that the period between successive FSAR updates should not be limited to 24 months as proposed. Their rationale was that the restriction of 24 months was unnecessary.

Response. Upon receipt of the Yankee Atomic Electric Co. comment letter of July 20, 1992, the NRC again reviewed the petition (PRM 50–55) submitted by Yankee Atomic Electric Co. and the comments submitted in response to the Notice of Receipt. Based on this review, the NRC believes that the current action being taken to reduce the burden on nuclear licensees is substantially similar to the relief requested in the petition. The 24-month interval for successive FSAR updates is addressed in comment number 6 above. It should be noted that the petition did not contain a specific reference to a number of months regarding successive FSAR updates. With respect to the petitioner's concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis. This final rule does not address multiple facilities.

This final rule is considered by the NRC to grant the petition submitted by the Yankee Atomic Electric Co. This final rule constitutes final NRC action on the petition.

Discussion

The Nuclear Regulatory Commission is amending 10 CFR parts 20 and 50 to implement the eight proposed actions identified below and also identified in the report on "Special Review of Existing NRC Regulations" that was completed by the CRGR and that was attached to Chairman Selin's letter to the White House dated April 27, 1992. These actions will not reduce the protection of the public health and safety or the common defense and security. Each of the eight actions is discussed below.

1. Posting of Rooms Occupied by Diagnostic Nuclear Medicine Patients (10 CFR 20.1903(b))

The revision reduces the posting requirements for rooms in hospitals occupied by patients administered radioactive materials who might otherwise be released from confinement under the provisions of 10 CFR 35.75.

The estimated savings to licensees is $300,000 for elimination of the need for posting.

2. Contamination Monitoring of Packages (10 CFR 20.1906(b))

This action clarifies the regulations and reduces the monitoring burden for packages containing radioactive material in the form of a gas or in a special form as defined in 10 CFR 71.4.

The estimated savings to licensees is $10.1 million.

3. Frequency of Radiological Effluent Reports (10 CFR 50.36a)

This action reduces the requirements for the submission of reports concerning the quantity of principal nuclides released to unrestricted areas in liquid and gaseous effluents from semiannually to annually.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $16,800,000 for licensees and $360,000 for the NRC.

4. Use of Fuel with Zirconium-Based (Other than Zircaloy) Cladding (10 CFR 50.44, 50.46, and Appendix K to Part 50)

This action revises the acceptance criteria in 10 CFR 50.44 and 50.46, relating to evaluations of emergency core cooling systems and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to include ZIRLO as an acceptable zirconium based cladding material along with zircaloy will reduce the licensee burden but will not reduce the protection of the public health or safety. The NRC will address, through an appropriate separate rulemaking, the use of other similar zirconium based cladding materials when all of the necessary safety evaluations for those materials have been completed.

The estimated savings for eliminating the need to process recurring exemptions to the regulations to licensees is $2 million and the savings to the NRC is $50,000. This estimate is based on six plants per year requesting the use of ZIRLO clad fuel over the next 8 years.

5. Receipt Back of Processed Low Level Waste (10 CFR 50.54)

This action is addressed in a separate rulemaking. For additional information, see the proposed rule entitled "Receipt of Byproduct and Special Nuclear Material" published in the **Federal Register** on April 24, 1992 (57 FR 15034).

6. Annual Design Change Reports (10 CFR 50.59)

This action revises the requirements for the annual submission of reports for facility changes under § 50.59 (Changes, tests, and experiments) to conform with the proposed change for updating the

FSAR (see Item 7). This action does not affect the substance of the evaluation or the documentation required for § 50.59 type changes. It only affects the interval for submission of the information to the NRC. Instead of submitting the information annually, the information can be submitted on a refueling cycle basis, provided the interval between successive reports does not exceed 24 months.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $1,500,000 for licensees and $400,000 for the NRC.

7. Frequency of Final Safety Analysis Report (FSAR) Updates (10 CFR 50.71)

This action provides licensees with an option from the current requirements for the annual updating of the Final Safety Analysis Report (FSAR). In lieu of an annual submission, licensees may choose to provide the required information once per each refueling outage. Updates to the FSAR can be submitted 6 months after each refueling outage, provided the interval between successive updates to the FSAR does not exceed 24 months. This action does not affect the substance of FSAR updates.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $11,100,000 for licensees and $910,000 for the NRC.

8. Elimination of Unnecessary Event Reports (10 CFR 50.72 and 50.73)

This action is addressed in a separate rulemaking. For additional information, see the proposed rule entitled "Minor Modifications to Nuclear Power Reactor Event Reporting Requirements" published in the **Federal Register** on June 26, 1992 (57 FR 28642).

Environmental Impact: Categorical Exclusion

The NRC determined that the final regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(2) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers, 3150–0014 and 3150–0011.

The reduction of the public reporting burden for this collection of information is estimated to average 208 hours per response for operating power reactors and 1 hour per response for certain materials licensees, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden reduction or any other aspect of this decrease in the collection of information including suggestions on this reduced burden to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0011, 3150–0014), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC is amending its regulations to reduce the regulatory burden on nuclear licensees. This action reflects an initiative on the part of the NRC and responds to the spirit of President Bush's memoranda of January 28, 1992, which requested that selected Federal agencies review and modify regulations that will reduce unnecessary burden of governmental regulation and ensure that the regulated community is not subject to duplicative or inconsistent regulation. The NRC has identified eight rulemaking actions that would eliminate duplicative or inconsistent regulatory requirements. Six of the actions are included in this package. Two of the eight actions are being processed as separate rulemakings and are not discussed here. The eight actions are as follows:

1. Posting of Rooms Occupied by Diagnostic Nuclear Medicine Patients—to include exceptions for posting requirements for rooms in hospitals for patients administered radiopharmaceuticals for diagnostic tests (10 CFR 20.1903(b)).

2. Contamination Monitoring of Packages—to eliminate certain provisions for contamination monitoring of packages containing certain types of radioactive material (10 CFR 20.1906(b)).

3. Frequency of Radiological Effluent Reports—to change the frequency of reports on power reactor radiological effluents from twice per year to once per year (10 CFR 50.36a).

4. Use of Fuel with Zirconium-Based Cladding—to eliminate the need to obtain exemptions in order to use certain fuel cladding material not presently addressed in the regulations (10 CFR 50.44, 10 CFR 50.46 and 10 CFR part 50, appendix K).

5. Receipt Back of Processed Low Level Waste—separate rulemaking (10 CFR 50.54).

6. Annual Design Change Reports—to change the frequency of reporting changes at power reactors from once per year to once per refueling cycle (10 CFR 50.59(b)).

7. Frequency of Final Safety Analysis Report Updates—to change the frequency of safety analysis report updates from once per year to once per refueling cycle (10 CFR 50.71).

8. Elimination of unnecessary event reports—separate rulemaking (10 CFR 50.72 and 50.73).

Each of these actions considers the elimination or relaxation of regulatory requirements currently imposed on NRC licensees. Action Items 1 and 2 would affect material licensees while Action Items 3 through 8 would affect power reactor licensees. For each regulatory action, the NRC has evaluated the health and safety implications and the cost impacts relative to a status quo alternative. The NRC finds that each would result in a reduction in burden without reducing protection of the public health and safety. The public health and safety determination appears in a document entitled "Report on Special Review of Existing NRC Regulations by the Committee to Review Generic Requirements" issued on April 13, 1992. Additionally, an analysis of the safety implications of Action Item 4 is available in a U.S. NRC letter to Westinghouse Corporation dated July 1, 1991, entitled "Acceptance For Referencing of Topical Report WCAP–12610 "Vantage+Fuel Assembly Reference Core Report" (TAC NO. 77258)."

The cost savings to both the licensee population and the NRC appear below. Dollar impacts are expressed on a 1992 present worth basis in 1992 dollars. The basis for these cost estimates is available in a report entitled "Analyses of Potential Cost Savings for Selected NRC Reforms" dated June 10, 1992.

TOTAL DISCOUNTED [1] COST SAVINGS ASSOCIATED WITH PROPOSED REGULATORY REVISIONS

[In millions of 1992 dollars]

Regulatory revision	Licensees	NRC
Item 1	0.3	[2] −0.100
Item 2	10.1	[2] −0.100
Item 3	16.8	0.360
Item 4	2.0	0.050
Item 5	[3] N/A	[3] N/A
Item 6	1.5	0.400
Item 7	11.1	0.910
Item 8	[3] N/A	[3] N/A

[1] Assumes an annual real discount rate of 5%.
[2] Negative cost savings represent a cost expenditure.
[3] Not applicable—separate rulemaking.

The NRC concludes that each of these proposed regulatory revisions is justified due to the net cost savings that will accrue without reducing public health and safety.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, this rule will not have a significant adverse economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as a small business or organization, one whose gross annual receipts do not exceed $3.5 million, or as a small governmental jurisdiction whose supporting population is 50,000 or less. The first two issues involve the relaxation of requirements which will affect approximately 5,000 material licensees. Although many of these licensees may be small entities, there should be no adverse impact on these small licensees because the regulations are being relaxed. The remaining six issues affect 112 power reactor licensees. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the NRC Size Standards.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20 and 50.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103(a), (b), and (f), 20.104 (a) and (b), 20.105 (b), 20.106 (a), 20.201, 20.202 (a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005(b) and (c), 20.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161(b), 68 Stat. 948 as amended (42 U.S.C. 2201(b)); § 20.2106(d) is issued under the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a; and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), 20.409, 20.1102(a)(2) and (4), 20.1204(c), 20.1206 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006(b)–(d), 20.2101–20.2103, 20.2104(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2001(o)).

2. Section 20.1903 is amended by revising paragraph (b) to read as follows:

§ 20.1903 Exceptions to posting requirements.

* * * * *

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to § 20.1902 provided that the patient could be released from confinement pursuant to § 35.75 of this chapter.

* * * * *

3. Section 20.1906 is amended by revising paragraph (b) to read as follows:

§ 20.1906 Procedures for receiving and opening packages.

* * * * *

(b) Each licensee shall—

(1) Monitor the external surfaces of a labeled [3a] package for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 10 CFR 71.4;

(2) Monitor the external surfaces of a labeled [3a] package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in § 71.4 and appendix A to part 71 of this chapter; and

(3) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

* * * * *

[3a] Labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations, 49 CFR 172.403 and 172.436–440.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (j)(l), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.49(d), (h) and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are

issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

5. Section 50.36a is amended by revising paragraph (a)(2) to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) * * *

(2) Each licensee shall submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months of operation, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

* * * * *

6. Section 50.44 is amended by revising the introductory text of paragraphs (a), (b), and paragraph (c)(1) to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled power reactors.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA), by—

* * * * *

(b) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with the capability for—

* * * * *

(c)(1) For each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, it must be shown that during the time period following a postulated LOCA, but prior to effective operation of the combustible gas control system, either:

* * * * *

7. Section 50.46 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light water nuclear power reactors.

(a)(1)(i) Each boiling and pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a loss-of-coolant accident. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II, Required Documentation, sets forth the documentation requirements for each evaluation model.

* * * * *

8. Section 50.59 is amended by revising paragraph (b)(2) to read as follows:

§ 50.59 Changes, tests and experiments.

* * * * *

(b) * * *

(2) The licensee shall submit, as specified in § 50.4, a report containing a brief description of any changes, tests, and experiments, including a summary of the safety evaluation of each. The report may be submitted annually or along with the FSAR updates as required by § 50.71(e), or at such shorter intervals as may be specified in the license.

* * * * *

9. Section 50.71 is amended by revising paragraph (e)(4) to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) * * *

(4) Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months. The revisions must reflect all changes up to a maximum of 6 months prior to the date of filing.

* * * * *

Dated at Rockville, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 92-20855 Filed 8-28-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33-6952; 34-31071; 35-25612; 39-2289; IC-18905; IA-1325; File No. S7-26-84]

Temporary Lockbox Rule

AGENCY: Securities and Exchange Commission.

ACTION: Extension of temporary rule.

SUMMARY: The Commission is extending for one year the effectiveness of a temporary rule, adopted in June, 1984, which permits filing fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. Use of the lockbox is currently voluntary except for those entities filing on the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. This action will permit registrants to continue to use the lockbox pending adoption of a permanent rule.

EFFECTIVE DATE: September 1, 1992 through September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Wilson Butler, (202) 272-7210, Director, Office of Filings, Information and Consumer Services, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 27, 1984 (49 FR 27306), the Commission adopted a temporary amendment to rule 3a, 17 CFR 202.3a, to

permit filing fees to be remitted to a lockbox depository. The temporary rule has been extended on five previous occasions: February 3, 1986 (51 FR 4160), November 10, 1986 (51 FR 40791), September 4, 1987 (52 FR 33796), August 29, 1988 (53 FR 32890) and August 21, 1990 (55 FR 34010). Extension of the temporary rule permits filers to continue to submit filing fees to the Commission or transit fees to a lockbox depository in Pittsburgh, Pennsylvania by mail, wire transfer, or hand delivery.

A proposed permanent rule was published for public comment on August 7, 1992, as part of the Commission's EDGAR rules.[1] The permanent rule, when adopted, will revise the temporary rule as of its effective date. However, the EDGAR rules will not be adopted prior to the September 1, 1992 expiration of temporary rule 3a. Accordingly, the Commission has determined that the effectiveness of temporary rule 3a should be extended for a period of one year, until September 1, 1993.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that temporary rule 3a relates solely to agency organization, procedure or practice and therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

Accordingly, the effectiveness of 17 CFR 202.3a is extended from September 1, 1992 through September 1, 1993.

By the Commission.

Dated: August 24, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20895 Filed 8-28-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Final Regulations Under Sections 382 and 386 of the Internal Revenue Code of 1986; Pre-change Attributes

CFR Correction

In title 26 of the Code of Federal Regulations, part 1 (§§ 1.301–1.400), revised as of April 1, 1992, §§ 1.383–0 through 1.383–2 were inadvertently placed under the undesignated center heading reading "Regulations Applicable to Taxable Years Prior to Tax Reform Act of 1986". In both the table of contents and the text §§ 1.383–0 through 1.383–2 should appear following § 1.382–3 under the undesignated center heading "Carryovers".

In the same volume, on page 521, in the first column, § 1. 383–2T is correctly designated as § 1.383–2.

BILLING CODE 1505-01-D

[1] See Release Nos. 33-6947, 34-30954; 35-25589; 39-2286; IC-18864 (July 23, 1992) [57 FR 35442 (August 7, 1992)].

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 92-05]

Special Local Regulations: Tall Stacks 1992 (Ohio River Mile 469.0 To Mile 471.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Tall Stacks 1992. This event will be held at Cincinnati, Ohio on the Ohio River, from mile 469.0 to mile 471.0, October 13 through October 18, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will be effective 6 a.m. to 2:30 a.m., on October 13 through October 17 and 6 a.m. to midnight October 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax: (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafter of these regulations is Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

Discussion of Regulations

The Tall Stacks 1992 is a celebration of the sternwheeler age in America. Seventeen excursion boats will be attending. Steamboat races will be held Saturday, October 16th between 3 p.m. and 6 p.m. and Sunday, October 17th between 3 p.m. and 6 p.m. Other events that will take place during Tall Stacks 1992 are an owners' rowboat race, a towboat shove of war, and crew row boat races. A large number of spectator craft are expected to view these events. Regulation is required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0205 is added, to read as follows:

§ 100.35–T0205 Tall Stacks 1992.

(a) *Regulated Area.* The Ohio River, mile 469.0 to mile 471.0.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign " Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective 6 a.m. to 2:30 a.m., October 13 through October 17, 1992, and 6 a.m. to midnight on October 18, 1992.

Dated: August 19, 1992.

J.J. Lantry,

Captain, U.S. Coast Guard Commander, Second Coast Guard District, Acting.

[FR Doc. 92-20746 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-92-18]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the bridge owner, the Coast Guard is changing the operating regulations governing the Sunshine Skyway Drawbridge over the Gulf Intracoastal Waterway, mile 110.5, at Maximo Point, St. Petersburg, Pinellas County, Florida, by limiting the number of openings during certain periods. This change will relieve vehicular congestion due to back-to-back openings during construction of a replacement bridge, while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On June 22, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL, in the **Federal Register** (33 FR 27720). The Coast Guard received no letters commenting on the change. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal. The State of Florida requested that the bridge be allowed to open only on the hour and half-hour between 7 a.m. and 8 p.m. daily in order to eliminate back-to-back openings which contribute to traffic congestion. A Coast Guard evaluation of the proposal concluded that highway traffic congestion, brought on by construction of an adjacent replacement bridge with a reduction in available highway traffic lanes, is being exacerbated by frequent bridge openings.

Discussion of Comments and Changes

There were no letters or comments received in response to the proposed rule. The final rule is therefore unchanged from the proposed rule published on June 22, 1992.

Regulatory Evaluation

These regulations are considered to be not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this change will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this change, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.287, paragraph (d)(3) is redesignated as (d)(4) and a new paragraph (d)(3) is added to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d) * * *

(3) The draw of the Sunshine Skyway Structure "A" drawbridge, mile 110.5, at Maximo Point, shall open on signal; except that from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour.

* * * * *

Dated: August 18, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92-20750 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 92-108]

Safety Zone: Narragansett Bay, RI

AGENCY: Coast Guard.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Narragansett Bay, RI, during the fireworks display that will take place following the Navy Band Newport's "Salute to Summer" concert on August 28, 1992, at the Naval Education and Training Center in Newport. The safety zone will consist of the waters within a 500 yard radius around the barge from which the fireworks will be launched, approximate position (41–30–27N, 71–20–02W). The safety zone is needed to protect pleasure craft and personnel onboard these vessels from potential hazards associated with a fireworks display. This safety zone replaces the original safety zone for the "Salute to Summer" fireworks display, which was published in the August 10, 1992, **Federal Register** (57 FR 35465). Originally the fireworks were to be launched from the shore at the southwest corner of Coaster's Harbor Island. Presently the fireworks will be launched from a site in the water approximately 350 yards due west of the original launch site.

EFFECTIVE DATE: This regulation is effective at 8 p.m. on August 28, 1992, and will terminate at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the rain date is September 4, 1992, and the safety zone will be effective on September 4, 1992, between the hours of 8 p.m. and 10 p.m. unless terminated sooner by the Captain of the Port Providence.

FOR FURTHER INFORMATION CONTACT: LTJG. T.M. Burke of Marine Safety Office Providence at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG T.M. Burke, Project Officer for the Coast Guard Captain of the Port Providence and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. A safety zone for this event was originally published in the August 10, 1992, **Federal Register** (57 FR 35465). The Coast Guard was informed of the need to change the original safety zone parameters on August 3, 1992, which is insufficient notice to provide for full public participation in this rulemaking effort. In addition, this rule makes only a slight change to the area enclosed in the safety zone from that which was originally published. This change provides for increased safety of personnel viewing the fireworks display from shore. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels and personnel in the vicinity of the fireworks display.

As discussed in the original rule, this event is significant because it provides the naval community in Newport, as well as the general public, the opportunity to recognize the Navy Band Newport's contributions to the community. The fireworks are being held in conjunction with the Navy Band Newport's last concert for the summer and delaying the fireworks display would make them meaningless. Also, as explained in the original rule, this regulation places only minimal burden on vessel traffic. Therefore, good cause exists for not making this rule effective thirty days after publication.

Background and Purpose

On August 28, 1992, the Naval Education and Training Center in Newport is sponsoring a fireworks display to be held following the Navy Band Newport's "Salute to Summer" concert. The "Salute to Summer" is the final concert in the summer 1992 series and the fireworks display serves to pay proper tribute to the ending of summer and to the efforts of the Navy Band Newport throughout the summer season. The concert and the fireworks are open to the public and significant public attendance is expected. The fireworks will be launched from a barge anchored in approximate position (41–30–27N, 70–20–02W), and the display will take place between the hours of 9 p.m. and 10 p.m. on August 28, 1992. The rain date is September 4, 1992.

The Coast Guard is establishing a safety zone on the waters within a 500 yard radius around the fireworks launch barge. This regulation is needed to protect the spectator vessels in the vicinity, as well as personnel onboard these vessels, from damage or personal injury due to the potential hazards associated with a fireworks display. These potential hazards include, but are not limited to, personal injury and fire aboard vessels in the area as a result of stray projectiles or hot/burning falling debris. The safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on August 28, 1992. If the fireworks display is postponed due to inclement weather, the safety zone will be in effect from 8 p.m. to 10 p.m. on September 4, 1992.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The Coast Guard expects the economic impact of this regulation to be minimal due to the limited duration of the zone, specifically two hours on one day. Also, the area of water enclosed in the safety zone is close to the shoreline and is not transited by commercial vessel traffic. Spectator vessels that might wish to transit through or to anchor in the waters inside the safety zone will be required to remain at least 500 yards from the launch site. These vessels are able to transit through alternate areas or to anchor to view the display at any location outside the zone. Therefore these vessels will not experience undue hardship.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this final rule will have no significant impact and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of Part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 49 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T01–096 is amended to read as follows:

§ 165.T01–096 Safety Zone: Narragansett Bay, RI.

(a) *Location.* The following area is a safety zone: The area of water within a 500 yard radius around the barge from which the fireworks will be launched. The barge will be anchored in approximate position (41–30–27N, 71–20–02W).

(b) *Effective Date.* This regulation is effective at 8 p.m. on August 28, 1992. It terminates at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on September 4, 1992, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: August 20, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92–20744 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–93; RM–7950]

Radio Broadcasting Services; Fagaitua, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276C2 to Fagaitua, American Samoa, as that community's first local FM service at the request of Aleki Sene. *See* 57 FR 19836, May 8, 1992. Channel 276C2 can be allotted to Fagaitua in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates South Latitude 14–16–19 and West Longitude 170–36–43. With this action, this proceeding is terminated.

DATES: Effective October 8, 1992. The window period for filing applications will open on October 9, 1992, and close on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–93, adopted July 24, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under American Samoa, is amended by adding Fagaitua, Channel 276C2.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20801 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–87; RM–7963]

Radio Broadcasting Services; Jonesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 263C2 for Channel 262A at Jonesboro, Arkansas, and modifies the license of TM Jonesboro, Inc., for Station KDEZ (FM) as requested. See 57 FR 14686, April 22, 1992. Coordinates for Channel 263C2 at Jonesboro are 35–54–35 and 90–42–10. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–87, adopted July 24, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 262A and adding Channel 263C2 at Jonesboro.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20800 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92-67; RM-7945]

Radio Broadcasting Services; McRae and Nashville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C3 for Channel 237A at Nashville, Georgia, modifies the license for Station WJYF (FM) to specify the higher powered channel, substitutes Channel 247A for Channel 237A at McRae, Georgia, and modifies the license for Station WDAX(FM) to specify the new Class A channel, at the request of Tifton Radio Partnership. See 57 FR 12793, April 13, 1992. Channel 237C3 can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements at its current licensed site. The coordinates are North Latitude 31–10–18 and West Longitude 83–21–57. Channel 274A can be allotted to McRae in compliance with the Commission's minimum distance separation requirement with a site restriction 1.3 kilometers (0.8 miles) east, in order to avoid a short-spacing to Station WBGA(FM), Channel 273C1, Waycross, Georgia, and a proposal to allot Channel 273C1 to Brunswick, Georgia. The coordinates are North Latitude 32–04–19 and West Longitude 85–52–43. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–67, adopted July 24, 1992, and released August 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 237A and adding Channel 237C3 at Nashville, and by removing Channel 237A and adding Channel 274A at McRae.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20791 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–131; RM–7702, RM–7840 and RM–7841]

Radio Broadcasting Services; Flora and Kings, MS and Newellton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 247C3 for Channel 248A at Flora, Mississippi, and modifies the construction permit for Station WXFJ(FM) accordingly, in response to a counterproposal filed by Crossroads Communications (RM–7840). The coordinates for Channel 247C3 are 32–36–25 and 90–23–27. The petition filed by Donald Brady to allot Channel 246A to Kings, Mississippi, as that community's first local service is dismissed. See 56 FR 21651, May 10, 1991. The counterproposal filed by Cynthia M. Gonzalez requesting the allotment of Channel 246A to Newellton, Louisiana, is also dismissed (RM–7840). With this action, this proceeding is terminated.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–131, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 248A and adding Channel 247C3 at Flora.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20798 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–32; RM–7907]

Radio Broadcasting Services; Blacksburg and Roanoke, VA, and Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blacksburg-Christiansburg Company, substitutes Channel 287C3 for Channel 285A at Blacksburg, Virginia, and modifies the license of Station WVVV–FM to specify the higher powered channel; and substitutes Channel 285C3 for Channel 287A at Roanoke, Virginia, and modifies the construction permit of Susan D. Brown for Station WULB, Roanoke, accordingly. To accommodate the allotments of Channel 287C3 and Channel 285C3 at Blacksburg and Roanoke, the Commission also substitutes Channel 276A for Channel 288A at Lewisburg, West Virginia. See 57 FR 08430, March 10, 1992, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–32, adopted July 24, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

The channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 287C3 can be allotted to Blacksburg with a site restriction of 6.2 kilometers (3.9 miles) northwest to accommodate Blacksburg-Christiansburg's desired site. The coordinates for Channel 287C3 at Blacksburg are 37–16–14 and 80–27–39. Channel 285C3 at Roanoke will require a site restriction of 8.4 kilometers (5.3 miles) northeast to avoid a short-spacing to Station WDOG–FM, channel 286C, Durham, North Carolina. The coordinates for Channel 285C3 at Roanoke are 37–20–33 and 79–53–50. Channel 276A can be allotted to Lewisburg and can be used at the transmitter site specified in Station WKCJ–FM's license. The coordinates for Channel 276A at Lewisburg are 37–48–17 and 80–21–03.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 285A and adding Channel 287C3 at Blacksburg; and by removing Channel 287A and adding Channel 285C3 at Roanoke.

3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 288A and adding Channel 276A at Lewisburg.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20799 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–47; RM–7929]

Television Broadcasting Services; Bellingham and Anacortes, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Prism Broadcasting Company, Inc., reallots UHF television Channel 24 in lieu of Channel 64 at Bellingham, Washington, and modifies Station KBCB(TV)'s construction permit accordingly, and substitutes Channel 64 in lieu of Channel 24 at Anacortes, Washington, to accommodate the substitution at Bellingham. *See* 57 FR 9680, March 20, 1992. Channel 24 can be allotted to Bellingham and Channel 64 to Anacortes in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 24 at Bellingham are North Latitude 48–40–48 and West Longitude 122–50–23. The coordinates for Channel 64 at Anacortes are North Latitude 48–30–06 and West Longitude 122–36–36. See Supplementary Information, *infra.*

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–47, adopted August 4, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Since Anacortes and Bellingham are located within 400 kilometers (250) miles of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under Washington, is amended by removing Channel 24 and adding Channel 64 at Anacortes, and by removing Channel 64 and adding Channel 24 at Bellingham.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20792 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1020

[Ex Parte No. 55 (Sub-No. 89)]

Inspection of Records

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing 49 CFR part 1020—Inspection of Records—from the Code of Federal Regulations as unnecessary and redundant. This rule is intended to make the Commission's regulations up to date.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721)

SUPPLEMENTARY INFORMATION: This regulation, which empowers Commission personnel to inspect motor carrier and broker property and records, essentially paraphrases 49 U.S.C. 11144(b). Other than to clarify that receivers, trustees and representatives having control, direct or indirect, over, or affiliated with any such motor carrier or broker, are included in the class of persons whose records are subject to inspection, it contains nothing that is not expressly stated in the statute. It appears to satisfy no legal requirement, or serve any other useful purpose. No comments opposing the proposed rule were filed in response to our Notice of Proposed Rulemaking in this proceeding, issued May 26, 1992. (57 FR 21290).

We wish to emphasize that in eliminating this regulation, we intend no change in existing law. The scope of the statute, as interpreted by the Commission and clarified by the regulation, remains the same.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We conclude that the proposed action will have no adverse impact upon a significant number of small entities.

List of Subjects in 49 CFR Part 1020

Brokers, Motor carriers.

PART 1020—[REMOVED]

For the reasons set forth in the preamble, under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553, 49 CFR part 1020 is removed.

Decided: August 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Commissioner Simmons dissented with a separate expression. Vice Chairman McDonald dissented.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20883 Filed 8-28-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 920811-2211]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS issues this emergency interim rule to establish a definition of "sea bass pot," applicable in the exclusive economic zone (EEZ) off North Carolina and South Carolina, and to remove the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North Carolina and South Carolina. The intended effect of this rule is to respond to an economic emergency without jeopardizing the rebuilding program for those snapper-grouper species that are overfished.

EFFECTIVE DATES: August 31, 1992, through November 30, 1992.

ADDRESSES: Copies of documents supporting this action may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under Amendment 4 to the FMP, implemented January 1, 1992, the use of fish traps in the EEZ was prohibited, but the use of sea bass traps north of Cape Canaveral, Florida, was allowed. A black sea bass trap is defined as a trap, other than a crustacean trap, that contains at any time no more than 25 percent, by number, of fish in the snapper-grouper fishery other than bank, rock, and black sea bass.

The current regulations limit a fisherman who uses or possesses a sea bass trap in the EEZ north of Cape Canaveral on any trip to the bag limits for those snapper-grouper species that have bag limits, and to zero for all other species except sea bass. This restriction was designed to preclude the use of a sea bass trap in a directed fishery for snapper-grouper species other than sea bass. However, the restriction has caused an economic hardship to fishermen in North Carolina and South Carolina who have traditionally fished with sea bass traps and other gear on a single trip because the fish harvested with other gear would exceed the bag limits for sea bass traps. The Council was unaware of the magnitude of this multiple-gear trip activity, and both the Council and fishermen were unaware of the impact of the bycatch restriction.

As of July 23, 1992, a total of 256 vessel permits have been issued that authorize the use of sea bass traps in the snapper-grouper fishery. Thirty-one of these vessels operate out of ports in Florida, one in Georgia, 63 in South Carolina, 152 in North Carolina, and nine in other states. Data for 1987 and 1988 show that the total sea bass catch off the southern Atlantic states taken by traps averaged about 465,000 pounds per year. North Carolina accounted for 65 percent, South Carolina 35 percent, and Florida and Georgia catches combined were about 1,000 pounds per year. Since then, Florida trap landings have averaged about 1,000 pounds of sea bass annually. In 1991, Georgia reported 37 pounds of sea bass taken by traps; South Carolina reported 238,815 pounds; and North Carolina reported approximately 500,000 pounds.

Landings data for North Carolina from June 1989 through May 1991 show that the peak season for sea bass landings occurs from October through April, with 85 percent of annual landings during this period. The monthly distribution of sea bass landings in South Carolina is similar to that in North Carolina.

In North and South Carolina the sea bass fishery has been traditionally an off-season fishery for shrimpers, inshore fishermen, and character and headboat crews, who use the fishery to supplement their incomes from other fisheries. The sea bass fishery has historically included sale of other snapper-grouper species taken as bycatch. Although the sea bass fishery is not the main source of income for most participants, often it can make the difference between a profitable or unprofitable year. In this context, the sea bass fishery is critical to many fishermen who could be forced to cease all fishing if their incomes from the sea bass fishery were eliminated.

Amendment 4 implemented a number of minimum size limits and gear restrictions—necessary to rebuild overfished stocks—which were expected to reduce temporarily the catch of snapper-grouper species. It appears that additional fishermen turned to sea bass trapping to make up for the lost income occasioned by these temporary reductions of catch. Hence, it appears that the bycatch restrictions for snapper-grouper species when using sea bass traps and other gear on a trip have been particularly burdensome during 1992.

Because recent cost and earnings data for the snapper-grouper fishery are not available, the direct and indirect negative impacts of existing sea bass trap regulations cannot be estimated precisely. The trap fishery for sea bass is an important component of the snapper-grouper fishery in North and South Carolina. The replacement value of the 6,941 sea bass traps currently in use is approximately $105,000. Sea bass trappers purchase bait, ice, and fuel; pay fees to fish houses for unloading and packing; and ship large and jumbo sea bass to markets in New York and cities in New England and Canada where as much as $3.50 to $5.00 per pound is received.

Ex-vessel revenues generated by the sea bass trap fishery in 1988 were $418,000 in North Carolina and $151,000 in South Carolina. Preliminary sea bass landings data from NMFS and testimony from fishermen indicate that higher revenues have been generated in more recent years. Before Amendment 4, the bycatch of other snapper-grouper species taken by hook and line on trips where sea bass traps were also used was an important component of the total value of all landings. While the official NMFS data have not been assembled to qualify the value of this bycatch, records from a sample of North and South Carolina sea bass trap fishermen indicate that 44 percent of the value of their catch may be lost under the present regulations.

Based on data provided by North and South Carolina fishermen through their respective fisheries agencies, it is estimated that $209,664 of ex-vessel revenues would be lost if current regulations remain in effect from October through December 1992. Because this estimate was not adjusted for the value of any bag-limit fish that might be taken in a sea bass trap and retained, the estimate may be slightly

high. Nevertheless, estimated lost revenues are significant.

The above estimate appears representative of the magnitude of the problem caused by the bycatch restrictions when using sea bass traps and confirms the public testimony of many fishermen. This testimony also indicated that 60 to 75 fishing firms in North and South Carolina formerly made trips with sea bass traps and other gear, but are now restricted to use of a single gear per trip. These fishermen, who have vessels designed for use of sea bass traps and other gear, must sacrifice the gain in productivity afforded by use of sea bass traps and other gear on the same trip.

Use of alternative gears, such as hook and line, on a trip that uses sea bass traps lessens the risk of an uneconomical trip because fish may sometimes be caught in traps when they are not being caught by hook and line and vice-versa. Fishermen in North Carolina and South Carolina, including sea bass fishermen, routinely lessen risk by participating in several fisheries and by using multiple gears on a trip.

To address this economic emergency, the Council has requested that a new term, "sea bass pot," be defined and applied to the waters off North Carolina and South Carolina. Under this emergency interim rule, a sea bass pot must have six rectangular sides; may not exceed 25 inches (63.5 cm) in height, width, or depth; must have specified mesh sizes; and must have openings and degradable fasteners as currently specified for sea bass traps. The specified mesh sizes vary slightly from the mesh sizes currently applicable to sea bass traps so that the traditional mesh used for sea bass pots may continue to be used.

The new term, "sea bass pot," is used in addition to the existing term, "sea bass trap." Thus, fishermen currently using traps that exceed the height/width/depth limitations for sea bass pots may continue to use them; however, the current restrictive bycatch limits for snapper-grouper species other than sea bass remain applicable when using such traps.

The new definition of sea bass pots is consistent with Amendment 4, which prohibited use of fish traps and allowed use of sea bass traps north of Cape Canaveral, Florida. Traditional sea bass pots that meet the height/width/depth limitations have had a low incidence of bycatch of snapper-grouper species other than sea bass. Studies by the South Carolina Wildlife and Marine Resources Department, conducted from 1978 through 1989, show that in 2,802 sea bass pot sets, 76 percent of catch by weight were sea bass. The remainder of the catch by weight consisted of porgies (16 percent), grunts (4 percent), snappers and groupers (1 percent), and others (3 percent). Further, the overall size restrictions will limit a pot's ability to be used in deep water, where legal-sized snapper-grouper other than sea bass are more prevalent, because currents and storms would increase the probability of loss of the pot. As is currently the case with sea bass traps, snapper-grouper species smaller than a minimum size limit must be released. However, released mortality is lessened in shallower water.

When using the newly defined sea bass pots and other gear on the same trip, there is no limitation on bycatch, other than minimum size.

The Council and NMFS have determined that these changes are in the best interests of the snapper-grouper fishery. The substantial negative impact under the current regulations justify emergency action to implement these changes as soon as possible. Accordingly, NMFS publishes this emergency interim rule, effective August 31, 1992, through November 30, 1992, as authorized by section 305(c)(2)(B) and (c)(3) of the Magnuson Act. By agreement of NMFS and the Council, this emergency interim rule may be extended for an additional period of not more than 90 days. During this rule's effective period, the Council is expected to initiate action under the framework procedure for adjusting management measures (50 CFR 646.25) to address permanent changes to the regulations.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for public comment.

The Assistant Administrator prepared an environmental assessment (EA) for this action, which concludes that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of North Carolina and South Carolina. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator for good cause under section 553(b)(B) of the Administrative Procedure Act finds that the need to relieve an economic hardship makes it contrary to the public interest to provide notice and public procedure thereon on this rule. Because this is a substantive rule that relieves a restriction, the 30-day delayed effectiveness provision of the Administrative Procedure Act does not apply and the rule is being made immediately effective.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 25, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.7, a new paragraph (nn) is added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(nn) Use a sea bass pot in the EEZ off North Carolina and South Carolina other than as specified in § 646.28.

3. In subpart B, new § 646.28 is added to read as follows:

§ 646.28 Fishing with sea bass pots.

(a) *Applicability.* This section governs fishing with sea bass pots in the EEZ off North Carolina and South Carolina, other provisions of this part notwithstanding. "Off North Carolina and South Carolina" means the waters

from a line extending directly east from the Virginia/North Carolina boundary (36°33'00.8" N. latitude) to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

(b) *Sea bass pot* means a trap that—

(1) Has six rectangular sides;

(2) Does not exceed 25 inches (63.5 cm) in height, width, or depth;

(3) Has mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(i) Hexagonal mesh (chicken wire) must be at least 1.5 inches (3.8 cm) between the long sides;

(ii) Square mesh must be at least 1.5 inches (3.8 cm) between sides; and

(iii) Rectangular mesh must be at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides;

(4) Has affixed to it an identification tag as specified in § 646.6(d) for a sea bass trap; and

(5) Has openings and degradable fasteners as specified in § 646.22(c)(3) for a sea bass trap.

(c) *Management measures.*

(1) Off North Carolina and South Carolina, a person aboard a vessel that has on board a permit issued under § 646.4(b) who uses or possesses a sea bass pot in the EEZ off North Carolina and South Carolina is exempt from the possession limits applicable for sea bass traps specified in § 646.22(c)(2).

(2) A sea bass pot in the EEZ off North Carolina and South Carolina may be pulled only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

[FR Doc. 92-20878 Filed 8-27-92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV-92-076]

Lemons Grown in California and Arizona; Proposed Weekly Volume Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets for the four week period from the week ending September 19 through the week ending October 10, 1992. Comments on the weekly levels of volume regulations must be received by the Department of Agriculture (Department) by 12:00 Noon Eastern Daylight Time and by the Lemon Administrative Committee (Committee) by 12 noon Pacific Daylight Time on the Monday prior to the Committee meeting associated with the week of regulation being addressed in the comment. A list of the committee meetings, dates and proposed levels of volume regulations can be found under the heading Committee Meetings and Dates. Consistent with program objectives, volume regulations for these weeks may be needed to establish and maintain orderly marketing conditions for fresh California-Arizona lemons. This proposal is based on a marketing policy which was adopted by the Committee on May 5, 1992. The Committee locally administers the marketing order covering lemons grown in California and Arizona.

DATES: Comments on the volume regulation proposed for the week ending September 19 must be received by the Department and the Committee by September 7; for the week ending September 26 by September 14; for the week ending October 3 by September 21; and for the week ending October 10 by September 28.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed weekly levels of volume regulation. Comments must be sent in triplicate to the Docket Clerk, room 2525-S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456, or by faxogram at (202) 720-5698; and to the Lemon Administrative Committee, 25129 The Old Road, suite 304, Newhall, California 91381, or by faxogram at (805) 253-2764. Such comments should reference the docket number, date, and page number of this issue of the **Federal Register**, and the dates of the regulatory week or weeks being addressed. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary. Such comments will be made available for public inspection in the Office of the Docket Clerk and the Committee office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons who are subject to regulation under the marketing order and approximately 2,000 producers of lemons in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona lemons may be classified as small entities.

The Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The declaration of policy in the Act includes provisions concerning establishing and maintaining such orderly marketing conditions as will protect producer prices and as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona lemons that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producers' returns.

The Committee may recommend to the Secretary the utilization of weekly volume regulations under the order to effectuate the purposes of the Act. Volume regulations may help to establish and maintain orderly marketing conditions for lemons, and at the same time benefit consumers by maintaining adequate supplies of lemons in the marketplace. Thus, volume regulation can be a valuable tool in achieving the goal of market stabilization for California-Arizona lemons.

Prior to evaluating the appropriate level of volume regulation to recommend for a particular week, the Committee considers the following factors: (1) The quantity of lemons in storage; (2) the available amount of lemons for shipment to the principal markets; (3) the trend in consumer income; (4) present and predicted weather conditions; (5) present and prospective prices of lemons; and (6) other relevant factors.

The lemon marketing order contains a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established for a given week, the Committee calculates the quantity of lemons (allotment) which may be handled by each handler. Certain provisions of the order allow handlers to ship lemons in excess of their allotments, within specified limits, in response to marketing opportunities. Handlers who want to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 38 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the following week. Handlers may also request upward adjustments and/or on-tree certification to increase their average weekly picks. This allows them to receive and ship a larger amount of lemons during a particular week or weeks. The order also provides off-bloom allotment which allows handlers to handle off-bloom lemons and receive allotment for such lemons prior to normal harvest time. Further, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotments. These provisions allow handler flexibility.

In addition, lemons which are handled or disposed of in the following outlets are exempt from volume regulation: (a) Charitable institutions or relief organizations for distribution by such agencies; (b) processing into by-products, including juice; (c) export markets; (d) gift packages; and (e) livestock feed. The marketing and distribution of limited amounts of organic lemons is also exempt from volume regulation, and the Committee may exempt from volume and size regulations any grower, other than whose principal occupation is food distribution, who sells directly to consumers.

Pursuant to § 910.50 of the order, the Committee is required to submit a marketing policy to the Secretary. The Committee adopted its marketing policy for the 1992–93 fiscal year at its May 5, 1992, meeting in Newhall, California. Other meetings to develop, discuss and review the Committee's marketing policy were held on April 8, April 22 and April 28. In addition to Committee members, industry members were present at these meetings.

Preliminary estimates indicate the California-Arizona lemon crop at 42,400 cars for the 1992–93 fiscal year compared to the estimated 40,589 cars produced in 1991–92. The Committee estimates District 1, central California, 1992–93 production at 1,700 cars compared to the 400 cars produced in 1991–92. In District 2, southern California, the crop is expected to be 24,500 cars compared to the 26,071 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 16,200 cars compared to the 14,418 cars produced last year.

California-Arizona lemons are typically shipped and disposed of in three major distribution channels—domestic fresh, export fresh, and by-products. The fresh outlets are the most profitable, and the best quality fruit usually goes to these markets. The by-products channel (mostly frozen, concentrated lemon juice) is a low-value salvage outlet for the remaining fruit. In terms of total crop utilization, the Committee estimates as of May 5, 1992, that approximately 17,750 cars of the 1992–93 crop (42 percent) will be utilized in fresh domestic markets compared with an estimate of 17,000 cars (42 percent) in 1991–92; fresh exports are projected at 7,000 cars (16 percent of the total 1992–93 crop) compared to an estimate of 6,500 cars (16 percent) in 1991–92; and 17,650 cars (42 percent of the 1992–93 lemon crop) will be utilized in by-product channels and other forms of processing compared with an estimate of 17,089 cars (42 percent) in 1991–92.

Expressed in terms of percentages, the total volume of California-Arizona lemons shipped to fresh domestic markets in 1992–93 could increase by 4 percent from 1991–92 estimates; export shipments could increase by 5 percent from 1991–92 estimates; and utilization in by-product channels and other forms of processing in 1992–93 may increase by 3 percent from 1991–92.

The marketing policy includes a proposed industry shipping schedule showing possible levels of volume regulation for each week of the 1992–93 fiscal year. The recommended shipping schedule is based on the initial crop estimate and covers the entire fiscal year. The proposed shipping schedule is as follows:

Week ending	Estimated weekly shipments (cars)
Aug. 8, 1992	335
15	335
22	340
29	350
Sept. 5	310
12	300
19	310
26	310
Oct. 3	310
10	310
17	305
24	305
31	300
Nov. 7	310
14	310
21	300
28	275
Dec. 5	320
12	360
19	355
26	275
Jan. 2, 1993	275
9	290
16	290
23	300
30	310
Feb. 6	320

Week ending	Estimated weekly shipments (cars)
13	330
20	330
27	350
Mar. 6	350
13	360
20	360
27	360
Apr. 3	375
10	400
17	340
24	360
May 1	365
8	375
15	395
22	395
29	400
Jun. 5	400
12	400
19	400
26	405
Jul. 3	400
10	390
17	380
24	370
31	350
Total	17,750

Currently, there is a size regulation in effect for lemons grown in California and Arizona which limits the handling of domestic fresh lemons to size 235's (1.82 inches in diameter) and larger in all districts. The size composition of fresh shipments of lemons normally peaks in the mid-sizes, 140's and 165's, with 80 percent to 85 percent of each fiscal year's total fresh shipments averaging 165's (2.13 inches in diameter) and larger. The Committee projects that the size composition of fresh shipments during the 1922–93 fiscal year will follow the same pattern.

Committee recommendations for volume regulations during the 1992–93 fiscal year may vary from the estimated shipping projections. Factors that may stimulate increased fresh lemon consumption and necessitate a Committee recommendation for volume regulation in excess of the shipping schedule include: (1) Significant changes in weather patterns in major consuming areas; (2) a regional or national concern for health; or (3) promotional efforts by industry marketing organizations. Factors that could adversely affect lemon demand in the marketplace and necessitate a recommendation for volume regulations at a lower level than indicated by the shipping schedule include: (1) Significant changes in weather conditions; (2) the size composition of existing supplies; (3) the condition of the fruit; (4) transportation problems; or (5) extreme supply fluctuations created by competitive imports.

Based on the Committee's deliberations and the marketing policy, it is evident that the Committee may recommend the implementation of volume regulation for certain weeks during the 1992–93 season. Because the Department has determined that volume regulation may be recommended and adopted, it is issuing this proposed rule covering the four week period from the week ending on September 19, 1992, through the week ending on October 10, 1992. Should the Committee recommend, and the Department adopt, regulation for any or all weeks during the four week period, the Department would issue final rules establishing such regulations. Similar proposed rules may be issued and subsequently finalized throughout the season.

The Department invites comments on the proposed weekly levels of volume regulation for the week ending September 19 through the week ending October 10, 1992. The Committee meets on a weekly basis to consider current and prospective marketing conditions and interested persons may orally present their position at such meetings. Interested persons are also invited to submit written comments to the Committee and the Department regarding the proposed levels of regulation for any or all weeks of the four week period specified in this rule. Interested persons who wish to comment in writing must submit copies to both the Department and the Committee. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary.

Comments proposing alternative levels of shipments, including no regulation, during this four week period should provide as much information as possible in support of the suggested alternatives. Interested persons are also invited to comment on the possible regulatory and informational impact of the proposed volume regulations on small businesses.

The Committee will consider comments received in response to this proposed rule when deliberating on its recommendations for volume regulation. The Department will also consider comments received in its evaluation of Committee recommendations for volume regulation. If warranted, the department will issue volume regulations on a weekly basis.

Comments on the weekly levels of volume regulation must be received by the Department by 12:00 Noon Eastern Daylight Time and by the Committee by 12:00 Noon Pacific Daylight Time the Monday prior to the Committee meeting associated with the week of regulation being addressed in the comment. Following is a list of the Committee's meeting dates, times, and locations, the regulatory week to be addressed at each meeting, and the proposed level of volume regulation for each regulatory week.

COMMITTEE MEETINGS AND DATES

1. Committee Meeting Date: September 8, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: September 13–September 19, 1992, Proposed Level: 310 cars.

2. Committee Meeting Date: September 15, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: September 20–September 26, 1992, Proposed Level: 310 cars.

3. Committee Meeting Date: September 22, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: September 27–October 3, 1992, Proposed Level: 310 cars.

4. Committee Meeting Date: September 29, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: October 4–October 10, 1992, Proposed Level: 310 cars.

Comments received will be analyzed and considered as part of the rulemaking process.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is proposed to be amended as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 910.1052 is added to read as follows:

§ 910.1052 Lemon Regulation 752.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 13 through September 19, 1992, is 310,000 cartons.

3. A new § 910.1053 is added to read as follows:

§ 910.1053 Lemon Regulation 753.

The quantity of lemons grown in California and Arizona which may be handled during the period from

September 20 through September 26, 1992, is 310,000 cartons.

4. A new § 910.1054 is added to read as follows:

§ 910.1054 Lemon Regulation 754.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 27 through October 3, 1992, is 310,000 cartons.

5. A new § 910.1055 is added to read as follows:

§ 910.1055 Lemon Regulation 755.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 4 through October 10, 1992, is 310,000 cartons.

Dated: August 26, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-20879 Filed 8-28-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Nuclear Power Plants, Seismic and Geologic Siting Criteria, Appendix Revision; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss the revision of appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants, to 10 CFR part 100.

DATES: September 11, 1992 8 a.m.

ADDRESSES: 11555 Rockville Pike, room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. Staff progress in the revision of appendix A to 10 CFR part 100 has been discussed in public meetings with NUMARC and other industry representatives on February 4, 1992, April 23, 1992, June 4, 1992 and July 10, 1992.

The purpose of this meeting is to meet with NUMARC and other industry representatives to discuss industry recommended alternatives to the draft proposed revision of appendix A to 10 CFR part 100 that was placed in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC (Memorandum from Lawrence C. Shao to Raymond F. Fraley, dated January 21, 1992, subject: Revision of appendix A to 10 CFR part 100—Geological and Seismological Siting Criteria for Nuclear Power Plants). No specific agenda is being proposed.

Dated at Rockville, Maryland, this 21st day of August, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92-20857 Filed 8-28-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-128-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 and -320 and Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42-300 and -320 series airplanes and Model ATR72-100 and -200 series airplanes. This proposal would require removal of the cotter pins on the left and right elevator tab hinges; a recheck of the torque of the nuts; and installation of correct size cotter pins. This proposal is prompted by reports of missing cotter pins on the left elevator tab hinges and incorrect dimension of cotter pins on the right elevator tab hinges. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane.

DATES: Comments must be received by October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-128-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gray Lium, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is make: "Comments to Docket Number 92-NM-128-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-128-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Model ATR42–300 and -320 series airplanes and Model ATR72–100 and -200 series airplanes. The DGAC advises that cases have been reported of missing cotter pins on the left elevator tab hinges and incorrect dimension of cotter pins on the right elevator tab hinges on in-service airplanes. This condition, if not corrected, could result in reduced controllability of the airplane.

Aerospatiale has issued Service Bulletins ATR42–55–0005, Revision 2, dated October 28, 1991, and ATR72–55–1001, Revision 2, dated October 28, 1991, which describe procedures for removal of the cotter pins on the left and right elevator tab hinges; a recheck of the torque of the nuts; and installation of correct size cotter pins. The DGAC classified these service bulletins as mandatory and has issued French Airworthiness Directives 91–214–042(B) and 91–215–006(B), both dated October 2, 1991, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removal of the cotter pins on the left and right elevator tab hinges; a recheck of the torque of the nuts; and installation of correct size cotter pins. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,180. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accorance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aeropatiale: Docket 92–NM–128–AD.

Applicability: Model ATR42–300 and –320 series airplanes and Model ATR72–100 and –200 series airplanes, as listed in Aeropatiale Service Bulletins ATR42–55–0005, Revision 2, dated October 28, 1991, and ATR72–55–1001, Revision 2, dated October 28, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the cotter pins on the left and right elevator tab hinges; recheck the torque of the nuts; and install correct size cotter pins, in accordance with Aeropatiale Service Bulletin ATR42–55–0005, Revision 2, dated October 28, 1991 (for Model ATR42–300 and –320 series airplanes); or Aeropatiale Service Bulletin ATR72–55–1001, Revision 2, dated October 28, 1991 (for Model ATR72–100 and –200 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20865 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–130–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes having entry or service doors equipped with slide rafts, that currently requires a repetitive operational check to manually open and close all entry/service doors to verify the integrity of the door counterbalance inner torsion springs, and replacement, if necessary. This action would require eventual replacement of certain inner torsion springs or certain counterbalance assemblies; when accomplished, this replacement would terminate the need for the currently required repetitive operational checks. This action would

also add airplanes to the applicability of the rule. This proposal is prompted by the development of an improved inner torsion spring that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to ensure opening of entry/service doors when required for emergency evacuation.

DATES: Comments must be received by October 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-130-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-130-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-130-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On March 30, 1989, the FAA issued AD 89-08-07, Amendment 39-6186 (54 FR 14206, April 10, 1989), applicable to certain Boeing Model 767 series airplanes with entry or service doors equipped with slide rafts, to require a repetitive operational check to manually open and close those entry/service doors in order to verify the integrity of the door counterbalance inner torsion springs, and replacement of the springs, if necessary. That action was prompted by reports of several instances of broken graphite-composite inner torsion springs in the counterbalance assemblies that inhibited normal door operation. This condition, if not corrected, would require extra effort to unlatch the door, and manual assistance to open the door in the emergency mode, or would render the door inoperable should the broken spring jam the counterbalance assembly. A jammed counterbalance assembly would prevent the entry/service doors from opening when required during an emergency evacuation.

Since the issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 767-52A0053, Revision 2, dated April 30, 1992, that describes procedures for examination of the counterbalance assembly at each entry and service door to determine the part numbers of the assembly and serial numbers of the inner torsion spring. If parts having certain part/serial numbers are installed, continued functional tests of the doors are necessary to ensure that the doors operate properly; if parts having other part/serial numbers (improved parts) are installed, the tests may be discontinued. Additionally, the service bulletin describes procedures for installation of an improved inner torsion spring, or the installation of an improved counterbalance assembly containing the improved inner torsion spring. When either of these items are installed, the need for the currently required repetitive operational checks is eliminated. The service bulletin also expands the effectivity listing to include additional airplanes, line positions 002 through 409, that have entry or service doors equipped with slide rafts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 89-08-07 to require that operators verify the part numbers of the counterbalance assembly or the serial number of the inner torsion spring currently installed on the airplane. If certain part-numbered items are installed, operational checks of the door must be continued; if certain other part-numbered items are installed (improved parts), the checks may be discontinued. This proposal would require eventual replacement of certain currently-installed inner torsion springs with improved inner torsion springs, or replacement of certain counterbalance assemblies with improved counterbalance assemblies containing improved inner torsion springs. When installed, this replacement would constitute terminating action for the required repetitive operational checks. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Additionally, this proposal would expand the applicability of the rule to include additional airplanes that have been identified as being subject to the addressed unsafe condition.

There are approximately 122 Boeing Model 767 series airplanes of the affected design in the worldwide fleet (this number includes 18 airplanes that would be added worldwide via this proposal). The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD (no U.S. registered airplanes would be added via this proposal). The FAA estimates that it would take approximately 1 work hour per airplane to accomplish each operational check, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed operational check requirements on U.S. operators would be $2,750 per cycle ($55 per airplane).

Additionally, the FAA estimates that it would take 80 work hours per airplane to accomplish the replacement, at an average labor rate of $55 per work hour. Required parts would cost approximately $24,500 per airplane. Based on these figures, the total cost impact of the proposed replacement requirements on U.S. operators would be $1,445,000, or $28,900 per airplane.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $1,447,750.

This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6186 (54 FR 14206, April 10, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–130–AD. Supersedes AD 89–08–07, Amendment 39–6186.

Applicability: Model 767 series airplanes with entry or service doors equipped with slide rafts; line positions 002 through 409, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure opening of entry/service doors when required for emergency evacuation, accomplish the following:

(a) For airplanes having line positions 132, 136, and 140 through 409, inclusive: Within 350 flight hours after May 9, 1989 (the effective date of AD 89–08–07, Amendment 39–6186), and thereafter at intervals not to exceed 350 flight hours, perform an operational check on each entry/service door to detect a broken counterbalance inner torsion spring, and replace with an airworthy part, if necessary, prior to further flight, in accordance with Boeing Alert Service Bulletin 767–52A0053, dated August 25, 1988; or Revision 1, dated December 22, 1988. After replacement of any counterbalance inner torsion spring, continue to perform the operational checks at intervals not to exceed 350 flight hours.

(b) For airplanes having line positions 002 through 409, inclusive: Within 400 flight hours after the effective date of this AD, or within 400 flight hours after the last operational check accomplished in accordance with paragraph (a) of this AD, whichever occurs first, determine if entry/service doors are equipped with an improved counterbalance assembly or an improved inner torsion spring and if further action is necessary, in accordance with Section III, paragraphs A. through F., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992. The airplane records may be reviewed in order to make this determination.

(1) For those doors equipped with an improved counterbalance assembly or an improved inner torsion spring, no further action is required. For airplanes affected by paragraph (a) of this AD, having doors equipped with these items: The operational checks required by paragraph (a) of this AD may be discontinued.

(2) For those doors not equipped with an improved counterbalance assembly or an improved inner torsion spring: Prior to further flight, perform an operational check to detect the existence of a broken inner torsion spring, in accordance with section III, paragraph G., of the Boeing service bulletin.

(i) If any broken inner torsion spring is found, prior to further flight, accomplish the procedures specified in either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Replace the spring with an airworthy part in accordance with Section III., paragraph G., of the Boeing service bulletin, and repeat the operational check at intervals not to exceed 400 flight hours.

(B) Install an improved counterbalance assembly or an improved inner torsion spring, in accordance with Section III, paragraph H., of the Boeing service bulletin. Such installation constitutes terminating action for the requirements of this AD.

(ii) If no broken inner torsion spring is found, accomplish the procedures specified in either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this AD:

(A) Repeat the operational check at intervals not to exceed 400 flight hours.

(B) Install an improved counterbalance assembly or an improved inner torsion spring, in accordance with Section III, paragraph H., of the Boeing service bulletin. Such installation constitutes terminating action for the requirements of this AD.

(C) For airplanes having line positions 002 through 409, inclusive, except those airplanes having doors affected by paragraph (b)(1) of this AD: Within 6 years after the effective date of this AD, install an improved counterbalance assembly, or an improved inner torsion spring, in accordance with Section III, paragraph H., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992. Such installation constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20866 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–55–89]

RIN 1545–AN82

General Asset Accounts Under the Accelerated Cost Recovery System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations on the election to maintain general asset accounts for depreciable assets to which section 168 of the Internal Revenue Code applies. Changes to the applicable tax law were made by the Tax Reform Act of 1986. The regulations will simplify certain depreciation calculations.

DATES: Written comments must be received by October 15, 1992. Requests to speak (with outlines of oral comments to be presented) at a public hearing scheduled for 10 a.m. on November 4, 1992, must be received by October 14, 1992.

ADDRESSES: Send comments and requests to speak (with outlines of oral comments to be presented) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:CORP:T:R (PS–55–89), room 5228).

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage at (202) 622–8452 (not a toll-free number); concerning the regulations, Kathleen Reed at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in proposed regulation § 1.168(i)–1(g)(3). This information is required by the Internal Revenue Service to monitor compliance with the election requirement of section 168(i)(4) of the Internal Revenue Code. The likely respondents or recordkeepers are individuals, businesses, and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require more or less time depending on their particular circumstances. Estimated total annual reporting and recordkeeping burden: 250 hours.

The estimated annual burden per respondent or recordkeeper varies from .20 to .30 hours, depending on individual circumstances, with an estimated average of .25 hours. Estimated number of respondents and recordkeepers: *1,000.* Estimated annual frequency of responses: One.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 168 (i)(4) of the Internal Revenue Code (Code) reflecting amendments made by section 201 of the Tax Reform Act of 1986. The amendments are to be issued under the authority contained in sections 168(i)(4) and 7805 of the Code.

Explanation of Provisions

The proposed regulations would simplify the computation of depreciation by allowing taxpayers to elect to group assets in one or more general asset accounts under section 168(i)(4) of the Code. The assets in any particular general asset account are depreciated as a single asset.

The proposed regulations provide that a general asset account includes assets that have the same asset class, depreciation method, recovery period, and convention and that are placed in service in the same taxable year. Assets subject to the general depreciation system of section 168(a) of the Code or the alternative depreciation system of section 168(g) may be accounted for in general asset accounts. Unlike the rules under section 168 as in existence before enactment of the Tax Reform Act of 1986, general asset account treatment is not limited to "mass assets."

An asset may not be placed in a general asset account if a credit is determined under section 47 or 48 of the Code or if the asset initially is used both in a trade or business (or for the production of income) and in a personal activity. If investment credit assets were included, additional rules would be required to redetermine the basis of the general asset account for any recapture amount determined under section 50. The Service concluded that the added complexity of these rules is not warranted under the circumstances; however, taxpayers are invited to comment on this matter.

In addition, assets that are used predominantly outside the United States or that give rise to depreciation deductions that are apportioned in whole or in part to foreign source income may not be placed in a general asset account. The inclusion of such assets would present substantial difficulties in applying other provisions of the Code, such as the rules of section 864(e) of the Code for apportioning the deduction for interest expense and the rules of section 865(c) for determining the source of gain from the disposition of depreciable personal property. The Service invites comments on how the issues presented by including such assets in a general asset account might be resolved in a manner that would not be unduly burdensome.

As required by section 168(i)(4) of the Code, the proposed regulations provide generally that the amount realized upon the disposition of an asset from a general asset account is recognized as ordinary income. The ordinary income treatment, however, is limited to the unadjusted depreciable basis of the account (determined by disregarding any election made under section 179 or 190 with respect to assets in the account) less any amounts previously recognized as ordinary income at the time of disposition. Any excess amount realized in subject to all other applicable provisions of the Code relating to recognition and character of gain (except the recapture provisions). In computing the depreciation allowance for the account, the unadjusted depreciable basis and the depreciation reserve of the general asset account are not reduced as a result of the disposition.

A special rule is provided for the disposition of all the assets or the last asset from the general asset account. Moreover, the taxpayer may terminate general asset account treatment for a particular asset if the asset is disposed of as the result of a casualty, a charitable contribution, the cessation of a business, or in transactions to which certain nonrecognition sections of the Code apply. For transactions described in section 168(i)(7)(B) of the Code, the transferee generally is bound by the transferor's general asset account election.

The proposed regulations include an anti-abuse rule providing that if an asset in a general asset account is disposed of in certain transactions one of the principal purposes of which is to avoid the limitations imposed under the Code with respect to a net operating loss deduction or the utilization of any credit, the disposition of the asset is treated as though an election under section 168(i)(4) of the Code had never been made for the asset.

The proposed regulations further provide the time and manner in which to make the election to establish general asset accounts. The election generally is irrevocable and is binding on the taxpayer for computing taxable income as well as computing alternative minimum taxable income.

Finally, the proposed regulations provide that these regulations apply to assets placed in service in taxable years ending on or after [the date of publication of the final regulations in the **Federal Register**]. For prior taxable years, the Service will allow the use of any reasonable method that clearly reflects income and is consistently applied to the general asset accounts.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Written Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. The public hearing will be held at 10 a.m. on November 4, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kathleen Reed, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development and style.

List of Subjects

26 CFR 1.56–0T through 1.58–9T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 is proposed to be amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.168(i)–1 also issued under 26 U.S.C. 168(i)(4). * * *

Par. 2. Section 1.56(g)–1 is amended by adding a new sentence at the end of paragraph (b) introductory text to read as follows:

§ 1.56(g)–1 Adjusted current earnings.

* * * * *

(b) * * * See § 1.168(i)–1(g) for an election to use general asset accounts.

* * * * *

Par. 3. Sections 1.168(i)–0 and 1.168(i)–1 are added to read as follows:

§ 1.168(i)–0 Table of contents for the general asset account rules.

This section lists the major paragraphs contained in § 1.168(i)–1.

Section 1.168(i)–1 General asset accounts

(a) Scope.
(b) Definitions.
(1) Unadjusted depreciable basis.
(2) Unadjusted depreciable basis of the general asset account.
(3) Adjusted depreciable basis of the general asset account.
(c) Establishment of general asset accounts.
(1) Assets eligible for general asset accounts.
(2) Grouping assets in general asset accounts.
(i) General rule.
(ii) Special rules.
(d) Determination of depreciation allowance.
(e) Disposition of an asset from a general asset account.
(1) Scope.
(2) General rule for a disposition.
(i) No immediate recovery of basis.
(ii) Treatment of amount realized.
(iii) Effect of disposition on a general asset account.
(iv) Coordination with nonrecognition provisions.
(v) Examples.
(3) Special rules.
(i) Disposition of all assets remaining in a general asset account.
(ii) Disposition of an asset in a qualifying disposition.
(iii) Transactions subject to section 168(i)(7).
(iv) Anti-abuse rule.
(f) Changes in use.
[Reserved].
(g) Election.
(1) Irrevocable election.
(2) Time for making election.
(3) Manner of making election.
(h) Effective date.

§ 1.168(i)–1 General asset accounts.

(a) *Scope.* This section provides rules for general asset accounts under section 168(i)(4) of the Internal Revenue Code (Code). The provisions of this section apply only to assets for which an election has been made under paragraph (g) of this section.

(b) *Definitions*—(1) *Unadjusted depreciable basis.* For purposes of this section, "unadjusted depreciable basis" is the basis of an asset for purposes of section 1011 of the Code without regard to any adjustments described in sections 1016(a) (2) and (3), reduced by the amount of the credit determined under section 44(a) and by the amount of any deductions allowed under section 179(a) or 190(a).

(2) *Unadjusted depreciable basis of the general asset account.* "Unadjusted depreciable basis of the general asset account" is the sum of the unadjusted depreciable bases of all assets included in the general asset account.

(3) *Adjusted depreciable basis of the general asset account.* "Adjusted depreciable basis of the general asset account" is the unadjusted depreciable basis of the general asset account less the adjustments to basis described in sections 1016(a) (2) and (3).

(c) *Establishment of general asset accounts.*—(1) *Assets eligible for general asset accounts.* Assets that are subject to either the general depreciation system of section 168(a) of the Code or the alternative depreciation system of section 168(g) may be accounted for in one or more general asset accounts. However, an asset is not to be included in a general asset account if—

(i) A credit is determined under section 47 or 48 for the asset;

(ii) A taxpayer uses the asset both in a trade or business (or for the production of income) and in a personal activity at any time before the close of the taxable year in which the asset is first placed in service by the taxpayer;

(iii) The asset is described in section 168(g)(1)(A); or

(iv) The asset give rise to a deduction for depreciation that would be apportioned in whole or in part to income from sources outside the United States under § 1.861–8.

(2) *Grouping assets in general assets accounts*—(i) *General rule.* If a taxpayer makes the election under paragraph (g) of this rule, assets that are subject to the election are grouped into one or more general asset accounts. Assets that are eligible to be grouped into a single general asset account may be divided into more than one general assets account. Each general asset account must include only assets that—

(A) Have the same asset class (for further guidance, see Rev. Proc. 87–56, 1987–2 C.B. 674, or its successors);

(B) Have the same applicable depreciation method;

(C) Have the same applicable recovery period;

(D) Have the same applicable convention; and

(E) Are placed in service by the taxpayer in the same taxable year.

(ii) *Special rules.* An asset for which an election under section 179 or 190 is made may be included in a general asset account to the extent of the asset's unadjusted depreciable basis. Assets without an asset class, but with the same characteristics described in paragraph (c)(2)(i)(B) through (E) of this section, may be grouped into a general asset account. Assets subject to the mid-quarter convention may only be grouped into a general asset account with assets that are placed in service in the same quarter of the taxable year. Passenger automobiles for which the depreciation allowance is limited under section 280F(a) must be grouped into a separate general asset account.

(d) *Determination of depreciation allowance.* Depreciation allowances are determined for each general asset account by using the applicable depreciation method, recovery period, and convention for the assets in the account. For purposes of applying section 280F(a) of the Code, the depreciation allowance for a general asset account established for passenger automobiles is limited for each taxable year to the amount prescribed in section 280F(a) multiplied by the number of automobiles originally included in the account less the number of automobiles disposed of during the year or in prior years in either qualifying dispositions (to which paragraph (e)(3)(ii) of this section applies) or transactions described in paragraph (e)(3)(iii) of this section. The depreciation allowances are recorded in a depreciation reserve account for each general asset account. The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a).

(e) *Disposition of an asset from a general asset account*—(1) *Scope.* This paragraph (e) provides rules applicable to dispositions of assets included in a general asset account. For purposes of this paragraph (e), an asset in a general asset account is disposed of when ownership of the asset is transferred or when the asset is permanently withdrawn from use in the taxpayer's trade or business or from use in the production of income. A disposition includes, but is not limited to, a sale, an exchange, a retirement, the physical abandonment, or the destruction of the asset. A disposition also occurs when an asset is transferred to a supplies or scrap account. A disposition does not include, however, the retirement of a structural component of real property.

(2) *General rule for a disposition*—(i) *No immediate recovery of basis.* Immediately before a disposition of any asset in a general asset account, the asset is treated as having an adjusted basis of zero for purposes of section 1011 of the Code. Therefore, no loss is realized upon the disposition of an asset from the general asset account. Similarly, where an asset is disposed of by transfer to a supplies or scrap account, the basis of the asset in the supplies or scrap account will be zero.

(ii) *Treatment of amount realized.* Any amount realized on a disposition is recognized as ordinary income (notwithstanding any other provision of subtitle A of the Code) to the extent the sum of the unadjusted depreciable basis of the general asset account and any amounts allowed as deductions under section 179 or 190 for assets in the account exceeds any amounts previously recognized as ordinary income upon the disposition of other assets in the account. The recognition and character of any excess amount realized are determined under other applicable provisions of the Code (other than sections 1245 and 1250).

(iii) *Effect of disposition on a general asset account.* The unadjusted depreciable basis and the depreciation reserve of the general asset account are not reduced as a result of a disposition of an asset from the general asset account.

(iv) *Coordination with nonrecognition provisions.* For purposes of determining the basis of an asset acquired in a transaction described in paragraph (e)(3)(ii)(B)(*4*) of this section (relating to certain nonrecognition provisions), the amount of ordinary income recognized under this paragraph (e)(2) is treated as the amount of gain recognized on the disposition.

(v) *Examples.* The following examples illustrate the application of this paragraph (e)(2).

Example 1. (i) *R*, a calendar-year corporation, maintains one general asset account for ten machines that cost a total of $100,000 and are placed in service in 1993. Of the ten machines, one machine costs $82,000 and nine machines cost a total of $18,000. This general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. No section 179 election was made for any of the machines. As of January 1, 1994, the depreciation reserve of the account is $20,000.

(ii) On February 8, 1994, *R* sells the machine that cost $82,000 to an unrelated party for $90,000. Under paragraph (e)(2)(i) of this section, this machine has an adjusted basis of zero.

(iii) On its 1994 tax return, *R* recognizes the amount realized of $90,000 as ordinary income because such amount does not exceed the unadjusted depreciable basis of the general asset account ($100,000) plus any deduction allowed under section 179 for assets in the account ($0) less amounts previously recognized as ordinary income ($0). Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not reduced by the disposition of the machine. Thus, the depreciation allowance for the account in 1994 is $32,000 (($100,000 − $20,000) × 40%).

Example 2. (i) The facts are the same as in *Example 1.* On June 4, 1995, *R* sells seven machines to an unrelated party for a total of $11,000. In accordance with paragraph (e)(2)(i) of this section, these machines have an adjusted basis of zero.

(ii) On its 1995 tax return, *R* recognizes $10,000 as ordinary income (the unadjusted depreciable basis of $100,000 plus the deduction of $0 allowed under section 179 less the amount of $90,000 previously recognized as ordinary income). The recognition and character of the excess amount realized of $1,000 ($11,000 − $10,000) are determined under other applicable provisions of the Code (such as section 1231) other than section 1245. Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not reduced by the disposition of the machines. Thus, the depreciation allowance for the account in 1995 is $19,200 (($100,000 − $52,000) × 40%).

(3) *Special rules*—(i) *Disposition of all assets remaining in a general asset account.* Paragraph (e)(2) of this section does not apply to, and a general asset account terminates on, the disposition of all of the assets, or the last asset, in the general asset account. The amount of gain or loss is determined under section 1001(a) of the Code by taking into account the adjusted depreciable basis of the general asset account at the time of the disposition. The recognition and character of the gain or loss are determined under other applicable provisions of the Code, except that the amount of gain subject to section 1245 or 1250 is limited to the excess of the depreciation allowed or allowable for the general asset account (including any deduction allowed under section 179 or 190) over any amounts previously recognized as ordinary income under paragraph (e)(2) of this section. The following example illustrates the application of this paragraph (e)(3)(i).

Example. (i) *T*, a calendar-year corporation, maintains a general asset account for 1,000 calculators that cost a total of $60,000 and are placed in service in 1993. No section 179 election was made for any of the assets. In 1994, *T* sold 200 of the calculators to an unrelated party for a total of $10,000 and recognized the $10,000 as ordinary income in accordance with paragraph (e)(2) of this section.

(ii) On March 26, 1995, *T* sells the remaining calculators in the general asset account to an unrelated party for $35,000. As a result, this account terminates and gain or loss is determined for the account.

(iii) Upon disposition, the depreciation allowed or allowable for the account is $36,960. Consequently, at the time of disposition, the adjusted depreciable basis of the account is $23,040 (unadjusted depreciable basis of $60,000 less the depreciation allowed or allowable of $36,960). Thus, *T* recognizes gain of $11,960 (amount realized of $35,000 less the adjusted depreciable basis of $23,040). The gain of $11,960 is subject to section 1245 of the Code to the extent of the depreciation allowed or allowable for the account (plus the deduction allowed under section 179 for assets in the account) less the amounts previously recognized as ordinary income ($36,960 + $0 $10,000 = $26,960). As a result, the entire gain of $11,960 is subject to section 1245.

(ii) *Disposition of an asset in a qualifying disposition*—(A) *Optional determination of the amount of gain, loss, or deduction.* In a qualifying disposition of an asset (described in paragraph (e)(3)(ii)(B) of this section, a taxpayer may apply this paragraph (e)(3)(ii) (rather than having paragraph (e)(2) of this section apply) and determine the amount of gain, loss, or deduction for the asset by taking into account the asset's adjusted basis. For this purpose, the adjusted basis of the asset at the time of the disposition equals the unadjusted depreciable basis of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included. The recognition and character of the gain, loss, or deduction are determined under other applicable provisions of the Code. However, if amounts previously recognized as ordinary income under paragraph (e)(2) of this section exceed the sum of the unadjusted depreciable basis of the general asset account and any amounts allowed as deductions under section 179 or 190 with respect to assets in the account as of the end of the taxable year of the qualifying disposition, the amount of gain subject to section 1245 or 1250 is limited to the depreciation allowed or allowable for the asset (including any deduction allowed under section 179 or 190 for the asset) less such excess.

(B) *Qualifying dispositions.* A qualifying disposition is a disposition that does not involve all the assets, or the last asset, remaining in a general asset account and that is—

(*1*) A direct result of a fire, storm, shipwreck, or other casualty, or from theft;

(*2*) A charitable contribution for which a deduction is allowable under section 170;

(*3*) A direct result of a cessation, termination, curtailment, or disposition of a business, manufacturing, or other income producing process, operation, facility, plant, or other unit (other than by transfer to a supplies, scrap, or similar account); or

(*4*) A transaction, other than a transaction described in paragraph (e)(3)(iii) of this section, to which a nonrecognition section of the Code applies (determined without regard to this section), such as section 1031 or 1033.

(C) *Effect of a qualifying disposition*—(*1*) *Adjustments to the general asset account.* If the taxpayer applies this paragraph (e)(3)(ii) to a qualifying disposition of an asset, then—

(*i*) The taxpayer removes the asset from the account in the year of disposition;

(*ii*) The unadjusted depreciable basis of the general asset account is reduced by the unadjusted depreciable basis of the asset as of the first day of the taxable year in which the disposition occurs;

(*iii*) The depreciation reserve of the general asset account is reduced by the depreciation allowed or allowable for the asset as of the end of the taxable year immediately preceding the year of disposition, computed by using the deprecation method, recovery period, and convention applicable to the general asset account in which the asset was included; and

(*iv*) For purposes of determining the amount of gain realized on subsequent dispositions that is subject to ordinary income treatment under paragraph (e)(2)(ii) of this section, section 1245, or section 1250, the amount of any deduction allowed under section 179 or 190 with respect to the asset is disregarded.

(*2*) *No effect on prior dispositions.* The adjustments to a general asset account for qualifying disposition of an asset have no effect on the recognition and character of prior dispositions subject to paragraph (e)(2) of this section.

(*D*) *Example.* The provisions of this paragraph (e)(3)(ii) are illustrated by the following example.

Example. (i) *Z*, a calendar-year corporation, maintains one general asset account for 12 machines that cost a total of $150,000 alone and are placed in service in 1993. Of the 12 machines, nine machines that cost $100,000 are used in *Z*'s Kentucky plant and three machines that cost $50,000 are used in *Z*'s Ohio plant. This general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. No section 179 election was made for the assets. As of January 1, 1995, the depreciation reserve for the account is $78,000.

(ii) On May 27, 1995, *Z* sells its entire manufacturing plant in Ohio to an unrelated party. The sales proceeds allocated to the three machines is $17,000. Because this transaction is a qualifying disposition under paragraph (e)(3)(ii)(B)(*3*) of this section, *Z* chooses to apply paragraph (e)(3)(ii) of this section.

(iii) For *Z*'s 1995 return, the depreciation allowance for the account is computed as follows. As of December 31, 1994, the depreciation allowed or allowable for the three machines is $26,000. Thus, as of January 1, 1995, the unadjusted depreciable basis of the account is reduced from $150,000 to $100,000 ($150,000 less the basis of $50,000 for the three machines), and the depreciation reserve of the account is decreased from $78,000 to $52,000 ($78,000 less the depreciation allowed or allowable of $26,000 for the three machines at December 31, 1994). Consequently, the depreciation allowance for the account in 1995 is $19,200 [($100,000 − $52,000) × 40%].

(iv) Gain or less for the three machines is determined on an asset by asset basis. However, for purposes of the computation in this example, the bases of the three machines have been aggregated. For *Z*'s 1995 return, the depreciation allowed or allowable for the disposed machines in a total of $4,800 [[($50,000 − $26,000) × 40%]/2]. Thus, the adjusted basis of the machines under section 1011 of the Code is $19,200 (the adjusted depreciable basis of $24,000 removed from the account less the depreciation allowed or allowable of $4,800 in 1995). As a result, the loss recognized in 1995 is $2200 ($17,000 − $19,200), which is subject to section 1231.

(iii) *Transactions subject to section 168(i)(7).* If an asset in a general asset account is transferred in a transaction described in section 168(i)(7)(B), the transferor must remove the transferred asset from the account in accordance with paragraph (e)(3)(ii)(C)(*1*) of this section. The transferee is bound by the transferor's election under paragraph (g) of this section with respect to the asset's basis in the hands of the transferee that does not exceed the asset's adjusted basis in the hands of the transferor. If all of the assets, or the last asset, in a general asset account are transferred, the transferee's basis in the asset transferred in equal to the adjusted depreciable basis of the general asset account as of the beginning of the transferor's taxable year in which the transaction occurs, decreased by the amount of depreciation allocable to the transferor for the year of the transfer.

(iv) *Anti-abuse rule*—(A) *In general.* If an asset in a general asset account is disposed of by a taxpayer in a transaction described in paragraph (e)(3)(iv)(B) of this section, the taxpayer must determine the amount of gain, loss, or deduction attributable to the disposition in the manner prescribed in

paragraph (e)(3)(ii)(A) of this section and must make the adjustments to the general asset account described in paragraph (e)(3)(ii)(C)(*1*) of this section.

(B) *Covered transactions.* A transaction is described in this paragraph (e)(3)(iv)(B) if the transaction is not described in paragraph (e)(3)(i) or paragraph (e)(3)(iii) of this section and one of the principal purposes of the transaction is to avoid the limitations imposed under the Code with respect to a net operating loss deduction or the utilization of any credit. The fact that a taxpayer with a net operating loss carryover or a credit carryover transfers an asset to a related person or transfers an asset pursuant to an arrangement where the asset continues to be used (or is available for use) by the taxpayer pursuant to a lease or otherwise indicates, absent strong evidence to the contrary, that a principal purpose of the transaction is to avoid relevant limitations imposed under the Code.

(f) *Changes in use.* [Reserved].

(g) *Election*—(1) *Irrevocable election.* If a taxpayer makes an election under this paragraph (g), the taxpayer consents to, and agrees to apply, all the provisions of this section to the assets included in a general asset account. Except as provided in paragraph (e)(3) of this section, an election made under this section is irrevocable and will be binding on the taxpayer for computing taxable income as well as alternative minimum taxable income for the taxable year for which the election is made and for all subsequent taxable years.

(2) *Time for making election.* The election to apply this section to depreciable assets shall be made on the taxpayer's income tax return for the taxable year in which the assets included in the general asset account are placed in service by the taxpayer, filed within the time prescribed by law (including extensions) for filing the return for such taxable year.

(3) *Manner of making election.* In the year of election, a taxpayer must file a completed Form 4562 and type or legibly print at the top of the Form 4562, "GENERAL ASSET ACCOUNT ELECTION MADE UNDER SECTION 168(i)(4)." The taxpayer shall maintain records (for example, "General Asset Account #1—all 1994 additions in asset class 00.11 for Salt Lake City, Utah facility") that identify the assets included in each general asset account, that establish the unadjusted depreciable basis and depreciation reserve of the general asset account, and that reflect the amount realized during the taxable year upon dispositions from each general asset account. The taxpayer's recordkeeping practices should be consistently applied to the general asset accounts. If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(h) *Effective date.* This section applies to depreciable assets placed in service in taxable years ending on or after [the date of publication of the final regulations in the **Federal Register**]. For depreciable assets placed in service after December 31, 1986, in taxable years ending before [the date of publication of the final regulations in the **Federal Register**], the Internal Revenue Service will not disallow any reasonable method that clearly reflects income and is consistently applied to the taxpayer's general asset accounts.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-20910 Filed 8-27-92; 9:08 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[PS-55-89]

RIN 1545-AN82

General Asset Accounts Under the Accelerated Cost Recovery System; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the election to maintain general asset accounts for depreciable assets to which section 168 of the Internal Revenue Code applies.

DATES: The public hearing will be held on Wednesday, November 4, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, October 14, 1992.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R. (PS-55-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 168(i)(4) the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, October 14, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-20911 Filed 8-27-92; 9:07 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[IA-4-92]

RIN 1545-AQ49

Authority of the Federal Crop Insurance Corporation To Require Employer Identification Numbers From Policyholders and Reinsured Companies for Purposes of the Federal Crop Insurance Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the authority of the Federal Crop Insurance Corporation (FCIC) to require policyholders and reinsured companies to furnish employer identification

numbers for purposes of administering the Federal Crop Insurance Act. The authority to solicit employer identification numbers was conferred upon the FCIC by section 2201(d) of the Food, Agriculture, Conservation, and Trade Act of 1990.

DATES: Written comments and requests for a public hearing must be received by September 30, 1992.

ADDRESSES: Send comments and any requests for a hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R:[IA–4–92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone 202–566–6985 (not a toll-free number).

SUPPLEMENTARY INFORMATION: .

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) to provide rules under section 6109 of the Internal Revenue Code of 1986 (Code), as amended by section 2201(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624, 104 Stat. 3953 (1990 FACT Act). Section 2201(d) of the 1990 FACT Act added a new subsection (f) to section 6109 of the Code. The new subsection (f) authorizes the Federal Crop Insurance Corporation (FCIC) to require policyholders and reinsured companies to furnish each policyholder's employer identification number to the insurer or the FCIC for purposes of administering section 506 of the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.* (1988)) (relating to the creation of a national crop insurance system).

These proposed regulations only relate to the amendments made by section 2201(d) of the 1990 FACT Act. They do not relate to the amendments made by section 1735(c) of the 1990 FACT Act, which added another subsection (f) to section 6109 of the Code (concerning access to employer identification numbers by the Secretary of Agriculture for purposes of the Food Stamp Act of 1977). For clarity this preamble will refer to the new subsection added by section 2201(d) of the 1990 FACT Act as subsection (g) of section 6109.

Explanation of Provisions

This document proposes to add new regulation § 301.6109–3. Pursuant to section 6109(g)(1) of the Code, proposed § 301.6109–3(a) provides that the FCIC may require each policyholder and each reinsured company to furnish to the insurer or to the FCIC the employer identification number (EIN) of the policyholder. Proposed § 301.6109–3(a) further provides that the Manager of the FCIC may require each policyholder to provide the EIN of each entity that holds or acquires a substantial beneficial interest in the policyholder.

Pursuant to section 6109(g)(1) and proposed § 301.6109–3(b), an officer or employee of the FCIC or authorized person may have access to the EINs obtained pursuant to this section for purposes only of establishing and maintaining a system of records necessary for the effective administration of the Federal Crop Insurance Act.

Section 6109(g)(1) requires that access to the EINs be restricted to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration or enforcement of the Federal Crop Insurance Act. This requirement is reflected in proposed § 301.6109–3(c).

Pursuant to section 6109(g)(2), proposed § 301.6109–3(d) provides that an officer or employee of the United States or authorized person (including former officers, employees, and authorized persons) who has or had access to an EIN obtained or maintained pursuant to section 6109(g)(1) may not disclose an EIN in any manner, except as authorized in that section.

Pursuant to section 6109(g)(3), proposed § 301.6109–3(e)(1) provides that the sanctions under section 7213(a)(1), (2), and (3) apply to any unauthorized, willful disclosure to any person of EINs obtained or maintained pursuant to section 6109(g)(1) in the same manner and to the same extent as section 7213(a) (1), (2), and (3) applies with respect to unauthorized disclosures of returns and return information. Proposed § 301.6109–3(e)(2) provides that the sanction under section 7213(a)(4) applies to any willful solicitation of EINs in the same manner and to the same extent that section 7213(a)(4) applies with respect to willful solicitation of returns or return information.

These proposed regulations have been coordinated with the FCIC and are proposed to be effective on [*the date that a Treasury decision on the subject of this notice of proposed rulemaking is published in the* **Federal Register**].

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service by September 30, 1992. All comments will be available for public inspection and copying in their entirety. The Treasury Department expects to issue final regulations on this matter as soon as possible. A public hearing will be held upon written request submitted by September 30, 1992 to the Internal Revenue Service by any person who has submitted written comments by September 30, 1992. If a public hearing is held, notice of time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Beverly A. Baughman, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 301 of title 26 of the Code of Federal Regulations as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6109–3 is added to read as follows:

§ 301.6109–3 Authority of the Federal Crop Insurance Corporation to collect employer identification numbers for purposes of the Federal Crop Insurance Act.

(a) *In general.* In connection with the administration of section 506 of the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) (relating to the creation of a national crop insurance system), the Federal Crop Insurance Corporation (FCIC) may require each policyholder and each reinsured company to furnish to the insurer or to the FCIC the employer identification number of the policyholder. In addition, the Manager of the FCIC may require each policyholder to provide to the FCIC or authorized person (as defined in paragraph (f) of this section) the employer identification number of each entity that holds or acquires a substantial beneficial interest in the policyholder. For purposes of the preceding sentence, a substantial beneficial interest in a policyholder is five percent or more of all beneficial interest in the policyholder.

(b) *Limited purpose.* An officer or employer of the FCIC or authorized person may have access to the employer identification numbers obtained pursuant to paragraph (a) of this section, but only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Federal Crop Insurance Act.

(c) *Restrictions on access.* The persons permitted access to employer identification numbers obtained pursuant to paragraph (a) of this section are officers and employees of the United States or authorized persons whose duties or responsibilities require access to the employer identification numbers for the administration or enforcement of the Federal Crop Insurance Act.

(d) *Confidentiality and disclosure of employer identification numbers.* Employer identification numbers obtained or maintained pursuant to this section are confidential. No officer or employee of the United States or authorized person (as defined in paragraph (f) of this section) who has or had access to any such employer identification number may disclose that number in any manner, except to persons described in paragraph (c) of this section. For purposes of this paragraph (d), the term *officer or employee* includes a former officer or employee, and the term "authorized person" includes a former authorized person.

(e) *Sanctions*—(1) *Unauthorized, willful disclosure of employer identification numbers.* Section 7213(a)(1), (2), and (3) apply with respect to the unauthorized, willful disclosure to any person of employer identification numbers that are obtained or maintained pursuant to this section in the same manner and to the same extent as section 7213(a)(1), (2), and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections.

(2) *Willful solicitation of employer identification numbers.* Section 7213(a)(4) applies with respect to the willful offer of any item of material value in exchange for any employer identification number obtained or maintained pursuant to this section in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(f) *Authorized person.* For purposes of this section, the term *authorized person* means an officer or employee of an insurer whom the Manager of the FCIC designates by rule to obtain employer identification numbers pursuant to this section. The rule shall prohibit the officer or employee from disclosing employer identification numbers in any manner (other than to the FCIC) and apply any other appropriate safeguards to that officer or employee.

(g) *Effective date.* The provisions of this section are effective [*the date that a Treasury decision on the subject of this notice of proposed rulemaking is published in the* **Federal Register**].

Phil Brand,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–20921 Filed 8–28–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–74]

Drawbridge Operation Regulations; Matlacha Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Lee County, the bridge owner, the Coast Guard proposes to change the regulations of the SR78 drawbridge over Matlacha Pass, mile 6.0, between the mainland and Little Pine Island, Fort Myers, Lee County, Florida, by permitting the number of openings to be limited during certain periods.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–536–4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–74] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under

"**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document and Mr. Ian MacCartney, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal from 8 a.m. to 7 p.m. From 7 p.m. to 8 a.m., the draw need not be opened for the passage of vessels. Lee County has requested that the bridge open only on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m., Monday through Saturday and on Sundays, from 7 a.m. to 12 noon and from 3 p.m. to 7 p.m. The purpose of this proposal is to ease the financial burden on Lee County for a full time tender at the drawbridge. In view of the low number of openings of this drawbridge, the reduced periods of operation would still meet the reasonable needs of navigation.

Discussion of Proposed Amendment

A review of the bridge logs indicates this drawbridge averages less than one opening per day. Heavy shoaling within Matlacha Pass to the South of the bridge also limits the opportunity for large vessels to transit through the area. The Coast Guard has concluded the proposed reduction in hours of operation for the bridge would not significantly impact navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26,1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule is written to accommodate the schedules of local commercial fishing vessels that normally transit the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule considers the needs of local commercial fishing vessels, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.303 is revised to read as follows:

§ 117.303 Matlacha Pass.

The draw of the SR78 bridge, mile 6.0 at Fort Myers, shall open on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. Monday through Saturday. On Sundays the draw shall open on signal from 7 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. At all other times, the draw need not be opened for the passage of vessels.

Dated: August 17, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92–20749 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–176, RM–8038]

Radio Broadcasting Services; Bentonville and Mountain Home, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Demaree media, Inc., licensee of Station KOLZ (FM), Channel 252C3, Bentonville, AR, seeking the substitution of Channel 252C2 for Channel 252C3 and modification of its license accordingly. In order to accommodate the request, petitioner seeks the substitution of Channel 232A for Channel 252A at Mountain Home, AR, and modification of the license of Station KTLO–FM, Channel 252A, accordingly. An Order to Show Cause is issued to Mountain Home Broadcasting Corp., licensee of Station KTLO–FM. Coordinates for Channel 252C2 at Bentonville, AR, are 36–11–00 and 94–00–00; coordinates for Channel 232A at Mountain Home, AR, are 36–20–55 and 92–23–59. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 252C2 at Bentonville, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before October 15, 1992, and reply comments on or before October 30, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20054. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Demaree Media, Inc., Attn: L. Patrick Demaree, President, Post Office Box 878, Fayetteville, AR 72702.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No 92–176, adopted July 24, 1992, and

released August 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20790 Filed 8–28–92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92–177, RM–8043]

Radio Broadcasting Services; Lamoni, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dwaine F. Meyer seeking the substitution of Channel 250C3 for Channel 249A at Lamoni, Iowa, and the modification of Station KLAL's license to specify operation on the higher class channel. Channel 250C3 can be allotted to Lamoni in compliance with the Commission's minimum distance separation requirements at Station KLAL's presently licensed transmitter site, at coordinates North Latitude 40–37–00 and West Longitude 93–56–20. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 250C3 at Lamoni or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun, Esq., Jerold L. Jacobs, Esq., Rosenman & Colin, 1300—19th Street, NW., suite 200, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 92–177, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20797 Filed 8–28–92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92–180, RM–8048]

Radio Broadcasting Services; Houghton, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Houghton Radio Group of North Carolina, Inc., proposing the substitution of Channel 272C2 for Channel 272A at Houghton, Michigan, and modification of the construction permit for Station WAAG(FM) accordingly. Canadian concurrence has been requested for this allotment at coordinates 47–039–43 and 88–35–27.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: George R. Parrish, President Houghton Radio Group of North Carolina, Inc. 815–12 Marlowe Road, Raleigh, North Carolina 27609.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 92–180 adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20795 Filed 8-28-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-182, RM-8047]

Radio Broadcasting Services; St. Charles, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by St. Charles Broadcasters proposing the allotment of Channel 299A to St. Charles, Minnesota, as that community's first local service. The coordinates for Channel 299A are 43-58-24 and 92-04-00.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian T. Grogan, Moss and Barnett, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-0340.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-182, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20793 Filed 8-28-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-179, RM-8046]

Radio Broadcasting Services; State College, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by PDB Corporation proposing the substitution of Channel 283C3 for Channel 282A at State College, Mississippi, and modification of the construction permit for Station WUMI (FM). The coordinates for Channel 283C3 are 33-24-00 and 88-53-00.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 4203, Wilmington, North Carolina 28406.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 92-179, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20796 Filed 8-28-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-181, RM-8044]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Magnum Radio, Inc., proposing the substitution of Channel 241C2 for Channel 241A and modification of the construction permit for Station WBOG, Tomah, Wisconsin, to specify operation on the higher class channel. The coordinates for Channel 241C2 at Tomah are 44-01-50 and 90-49-03.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David D. Oxenford, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 92-181, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20794 Filed 8–28–92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 18)]

Railroad Consolidation Procedures: Class Exemption for Transactions Within a Corporate Family

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served August 6, 1992 (57 FR 34891, August 7, 1992), the Commission requested comments by September 8, 1992, on a proposal to modify the corporate family class exemption applicable to rail carrier transactions, by making it applicable to all transactions within a corporate family that do not result in adverse changes in service levels. Regulation of such transactions does not appear to be necessary to carry out the rail transportation policy. By petition filed August 21, 1992, The Association of American Railroads (AAR) requests a 30-day extension until October 8, 1992, to file comments. AAR states additional time is needed because the current schedules of AAR counsel and member road personnel do not permit sufficient time for an adequate and coordinated response on behalf of the railroad industry. The extension request is reasonable and will be granted.

DATES: Comments are due on October 8, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 18) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 927–5660, [TDD for the hearing impaired: (202) 927–5721].

Decided: August 25, 1992.

By the Commission, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–20686 Filed 8–28–92; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 17)]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served August 7, 1992 (57 FR 35559, August 10, 1992), the Commission requested comments by September 9, 1992, on a proposal to revise the definition of "significant transaction" in rail carrier consolidation cases, and to eliminate certain requirements presently applicable to applications seeking approval of significant transactions. The proposed rule is intended, in most cases, to eliminate certain burdensome financial information requirements. By petition filed August 21, 1992, The Association of American Railroads (AAR) requests a 30-day extension until October 9, 1992, to file comments. AAR states additional time is needed because the current schedules of AAR counsel and member road personnel do not permit sufficient time for an adequate and coordinated response on behalf of the railroad industry. The extension request is reasonable and will be granted.

DATES: Comments are due on October 9, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 17) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 927–5660, [TDD for the hearing impaired: (202) 927–5721].

Decided: August 25, 1992.

By the Commission, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–20685 Filed 8–28–92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB-92-43]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: October 2, 1992.

Time: 10 a.m.

Place: Campbell House Inn, North Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40405.

Purpose: To recommend market opening dates, discuss Committee requests from previous meeting, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: August 26, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-20849 Filed 8-28-92; 8:45 am]

BILLING CODE 3410-02-M

National Organic Standards Board (NOSB); Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463), as amended, the Agricultural Marketing Service announces the forthcoming meetings of the NOSB.

DATES: September 27-30, 1992.

ADDRESSES: The NOSB will hold a public input session at the Common Ground Fair Site at the Windsor Fairgrounds on Route 32 in Windsor, ME, on September 27. The NOSB will be conducting a full board meeting at the Best Western Senator Inn, 284 Western Avenue, Augusta, Maine on the morning of September 28, from 8 to 12 a.m. Committee meetings will be held at the Best Western Senator Inn on September 29, from 8 a.m. to 5 p.m., with a full board meeting at the Best Western Senator Inn on the morning of the 30th, from 8 to 12 a.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006-South Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone: (202) 720-2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Public Law No. 101-624 (7 U.S.C. § 6501 *et seq.*) requires establishment of a National Organic Standards Board. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of title XXI of the Fact Act. The NOSB met for the first time in Washington, D.C., in March and formed six committees to work on various aspects of the Program. The committees are: Crops Standards, Processing, Labeling and Packaging, Livestock Standards, Accreditation, National Materials List, and International Issues.

The purpose of this meeting is to review the work of the various committees, including draft position papers on product ingredients and labeling as developed by the Processing Committee; recommendations on emergency spray, pesticide drift policy, irrigation water quality, planting stock policies developed by the Crops Committee; and recommendations on the proposed National List being developed by the Materials Committee. In addition, the Board will develop plans for its operations in the next fiscal year in light of budget allocations.

A final agenda will be available on September 11, 1992. Persons requesting copies should contact Mrs. Fox at the above address or telephone number.

The meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Harold S. Ricker at the above address or FAX to (202) 690-0338 by September 18, 1992, in order to be scheduled. The Committees will schedule time for public input on Sunday, September 27, beginning at 1 p.m. and continuing until 5 p.m., at the Common Ground Fair Site at the Windsor Fairgrounds in Windsor, ME. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern and should provide copies of written material elaborating on those issues for the Committees.

Dated: August 26, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-20888 Filed 8-28-92; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

Arkansas Electric Cooperative Corporation; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration has prepared an environmental assessment and subsequently made a finding of no significant impact with respect to the approval of a request by Arkansas Electric Cooperative Corporation to use its general funds for the cost of construction of a hydroelectric project at Lock and Dam Number 9 on the Arkansas River in Conway County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief,

Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: Arkansas Electric Cooperative Corporation is involved in the construction of a 32.4 megawatt (MW) hydroelectric generating plant at the U.S. Army Corps of Engineers' existing Lock and Dam Number 9 which is located at navigation mile 176.9 on the Arkansas River 3 miles southwest of Morrilton, Arkansas. The entire project will be confined to the north side of the river. Approximately 0.5 miles of 161 kV transmission line and a switching station will be constructed to tie the facilities into an existing Arkansas Power and Light 161 kV transmission line.

The Rural Electrification Administration's alternatives related to the hydroelectric project are to approve Arkansas Electric Cooperative Corporation's use of general funds or take no action.

Copies of the Rural Electrification Administration's environmental assessment and finding of no significant impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or at the offices of Arkansas Electric Cooperative Corporation, P.O. Box 194208, Little Rock, Arkansas 72219.

Dated: August 24, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–20817 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–15–F

Oglethorpe Power Corporation; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Oglethorpe Power Corporation to retain ownership, and take responsibility for operation of, a 230 kV switching station and connector transmission lines associated with the proposed Hartwell Generation Facility. The FONSI is based on a borrower's environmental report (BER) prepared by Oglethorpe Power Corporation and submitted to REA covering the proposed switching station and connector transmission lines. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted Oglethorpe Power Corporation's BER as the environmental assessment for the switching station and connector transmission lines.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The planned location of the Hartwell Generation Facility is in Hart County, Georgia, approximately one mile south of the Hartwell Dam. Hartwell Energy Limited Partnership will finance, construct, own, and operate the entire generation facility. It will also finance and construct the associated 230 kV switching station and connector transmission lines that will tie the output of the generation facility to Oglethorpe Power Corporation and Georgia Power Company's integrated transmission system. Upon completion of the switching station and connector transmission lines, Oglethorpe Power Corporation will retain ownership of these facilities and will take responsibility for their operation thenceforth. Oglethorpe Power Corporation's ownership and operation responsibilities will be limited solely to the switching station and connector transmission lines.

The planned location of the 230 kV switching station is approximately 200 feet northeast of the proposed Hartwell Generation Facility. The switching station will include conductors, support towers and foundations, disconnect switches, power circuit breakers, protective relaying and controls, metering equipment, and other ancillary equipment and wiring. An area of approximately 2 acres will be cleared and graded to accommodate the switching station.

The 230 kV connector transmission lines will entail one span of transmission line from the step-up transformers at the generation facility to the switching station and two transmission lines from the switching station to the existing 230 kV Bio to Hartwell Transmission Line at a point approximately 500 feet from the switching station.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Somto Egbuna, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, Georgia, 30085–1349, telephone (404) 270–7600.

Dated: August 25, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–20892 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 920816–2216]

Manufacturers' Shipments to Federal Government Agencies—1992

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Consideration.

SUMMARY: In accordance with title 13, United States Code, Sections 131, 182, 224, and 225, this quinquennial survey will be conducted for a sample of manufacturing establishments in selected industries that ship goods to the Federal Government. This survey is the only source of information on the value of manufacturers' shipments to Federal Government agencies by 4-digit Standard Industrial Classification (SIC) Code. The information collected in this survey is important to the business community and Federal, State, and local governments, all of which are interested in the economic effect of defense-related and other Federal procurements. The changing level and composition of Federal Government expenditures make it especially important that reliable information be available on the nature and extent of production for the Federal Government.

DATES: Comments must be submitted on or before September 30, 1992.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: John H. Berry, Assistant Chief for Economic Indicator Programs, Bureau of the Census, Washington, DC 20233 or 301–763–7464.

SUPPLEMENTARY INFORMATION: The Bureau of the Census is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. The next economic census will be conducted for 1992. The data collected in this survey are within the general scope and nature of those inquiries covered in the economic

censuses. The Bureau of the Census will select a probability sample of manufacturing establishments in the United States from the economic censuses panel with the probability of selection based on total employment size. The sample will provide, with measurable reliability, statistics on shipments to Federal Government agencies for selected industries. We will mail report forms to the firms covered by this survey and require their submission within 60 days after receipt.

This survey will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Dated: August 21, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–20915 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 23, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617 M–4, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of 1992 Annual Report.
5. Discussion of Workplan for 1992–93.
6. Discussion of Papers on Restructuring Export Controls and Export Control Principles.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: TAC Unit/EA/BXA, Room 1621, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–377–4959.

Dated: August 25, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of the Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–20875 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 595]

Expansion of Foreign-Trade Zone 92; Harrison County, MS (Gulfport Port of Entry)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone 92, has made application (filed 7/16/91, FTZ Docket 43–91, 56 FR 37889, 8/9/91) to the Board for authority to expand its general-purpose zone in Harrison County, Mississippi, within the Gulfport Customs port of entry, and to establish a subzone (see Board Order 596);

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited;

Whereas, the expansion is necessary to improve and expand zone services in the Gulfport area; and,

Whereas, the Board has found that with respect to the proposed general-purpose zone expansion the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the expansion proposal subject to an activation limit is in the public interest;

Now, Therefore, the Board hereby orders: That the Grantee is authorized to expand its general-purpose zone in accordance with the expansion proposal in the application filed on July 16, 1991, subject to the requirement that further Board concurrence would be obtained before the activated zone area may exceed 2,000 acres, and subject to the Act and the Board's regulations (as revised, 56 FR 50790–50806), including § 400.28.

Signed at Washington, DC, this 17th day of August, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternatives Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

(Acting) Executive Secretary.

[FR Doc. 92–20822 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 596]

Resolution and Order Approving With Restriction the Application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., for Special-Purpose Subzone Status, Avondale Enterprises, Inc. (Shipbuilding) Harrison County, MS

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, filed with the Foreign-Trade Zones Board (the Board) on July 16, 1991, requesting authority to expand Foreign-Trade Zone 92 in Harrison County, Mississippi (See Board Order 595), and requesting special-purpose subzone status at the shipyard of Avondale Enterprises, Inc. in Harrison County, Mississippi, within the Gulfport Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any activation of the general-purpose zone area beyond 2,000 acres requires further Board approval; (2) any foreign steel mill products admitted to the Avondale shipyard, including steel plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, and not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to the Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and, (3) in addition to the annual report, Avondale Enterprises, Inc., shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the shipyard primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 92, has made application (filed 07–16–91, FTZ Docket 43–91, 56 FR 37889, 08–09–91) to the Board for authority to establish a special-purpose subzone at the shipbuilding facility of Avondale Enterprises, Inc., in Harrison County, Mississippi;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to restrictions on steel mill products;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 92C) at the shipbuilding facility of Avondale Enterprises, Inc., in Harrison County, Mississippi, at the location described in the application, subject to the standard restrictions adopted by the Board for shipyard subzones as described in the resolution accompanying this action, and subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 17th day of August 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

(Acting) Executive Secretary.

[FR Doc. 92–20823 Filed 8–28–92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-030]

Large Power Transformers From France; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on large power transformers from France.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on large power transformers from France for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding (57 FR 22713). We stated in the notice that no later than June 30, 1992, interested parties, as defined in section 353.2(k) of the Department's regulations, may object to the Department's intent to revoke the antidumping finding.

On June 29, 1992, and June 30, 1992, two interested parties (ABB Power T&D Company, Inc., and the National Electrical Manufacturers Association) objected to our intent to revoke this finding. Therefore, because interested parties object to the revocation, we no longer intend to revoke this finding.

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–20824 Filed 8–28–92; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-031]

Large Power Transformers From Italy; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on large power transformers from Italy.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding pursuant to § 353.25(d)(4) of the Department's

regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on large power transformers from Italy for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding (57 FR 22713). We stated in the notice that no later than June 30, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke the antidumping finding.

On June 29, 1992, an interested party (the National Electrical Manufacturers Association) objected to our intent to revoke this finding. Therefore, because an interested party objects to the revocation, we no longer intend to revoke this finding.

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20825 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-814]

Antidumping Duty Order: Pure Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4162.

ANTIDUMPING ORDER: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)), on July 6, 1992, the Department of Commerce (the Department) made its final determination that pure magnesium from Canada is being sold at less than fair value (57 FR 30939, July 13, 1992). On August 19, 1992, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

In addition, on July 6, 1992, the Department found that critical circumstances existed with respect to pure magnesium from Norsk Hydro Canada, Inc. However, on August 19, 1992, the ITC notified the Department that critical circumstances do not exist with respect to any imports from Canada. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(3)(B) of the Act, the U.S. Customs Service will refund all cash deposits and release all bonds collected on pure magnesium from Canada entered or withdrawn from warehouse, for consumption, on or after November 22, 1991, and before February 20, 1992.

In accordance with sections 736 and 751 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pure magnesium from Canada. These antidumping duties will be assessed on all unliquidated entries of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after February 20, 1992, the date on which the Department published its preliminary determination notice in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Norsk Hydro Canada, Inc.	31.33
All others	31.33

Imports of pure magnesium from Timminco Limited are excluded from this order.

This constitutes the antidumping duty order with respect to pure magnesium from Canada, pursuant to section 736(a) of the Act.

Interested parties may contact the Central Records Unit, room B099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

Scope of Investigation

The product covered by this investigation is pure magnesium from Canada. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this investigation. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This order is published in accordance with section 736(a) of the Act and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20826 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-811]

Notice of Postponement of Preliminary Antidumping Duty Determination: Steel Wire Rope From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Anna Snider, or Amy Beargie, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at (202) 377-4733.

POSTPONEMENT: On May 5, 1992, the Department of Commerce (the Department) initiated an antidumping duty investigation of steel wire rope from Korea. the notice stated that we would issue our preliminary determination on or before September 16, 1992 (57 FR 19280, May 5, 1992).

On August 6, 1992, petitioner requested that the Department postpone the preliminary determination in this investigation for one week until September 23, 1992, pursuant to 19 CFR 353.15(c). Petitioner requested the extension in order to adequately review, assess and comment on the responses submitted by Korea Iron and Steel Wire, Ltd., Man Ho Rope Mfg., Ltd. and Young Heung Iron and Steel Co., Ltd. (collectively "respondents"). Respondents had previously been granted an extension of time for filing their responses which reduced the number of days that the petitioner had to review the information. Respondents submitted comments in opposition to petitioner's request on August 7, 1992. Under 19 CFR 353.15(c), petitioner's request to postpone the date of the

preliminary determination will be granted unless respondent provides compelling reasons for denying the request. We determined that respondents' arguments did not provide compelling reasons to deny petitioner's request. Therefore, we are postponing the date of the preliminary determination in this investigation until not later than September 23, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 733(c) of the Act and 19 CFR 353.15(d).

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20827 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-401]

Cotton Shop Towels From Peru, Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on cotton shop towels from Peru. Interested parties who object to this termination must submit their comments in writing not later than September 30, 1992.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Department of Commerce (the Department) published an agreement suspending the countervailing duty investigation on cotton shop towels from Peru (49 FR 35835). The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on cotton shop towels from Peru for seven consecutive annual anniversary months. September 1992 is the eighth anniversary of the suspension agreement.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties. Accordingly, as required by the Commerce Department's regulations (19 CFR 355.25(d)(4)), the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than September 30, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the following address: U.S. Department of Commerce, Import Administration, Central Records Unit, Room B-099, Washington, DC 20230. Attn: Office of Agreements Compliance.

If interested parties do not request an administrative review or object to the Department's intent to terminate by September 30, 1992, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with 19 CFR 355.25(d)(4) of the Department's regulations.

Dated: August 21, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20828 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 26, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (57 FR 21958). We have now completed the review and determine the net subsidy to be 12.11 percent *ad valorem* for all firms during the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 21958) the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987) covering the period January 1, 1990 through December 31, 1990. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Israeli industrial phosphoric acid. During the review period, this merchandise was classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990 and nine programs. Negev Phosphates, Ltd. (NPL) is the only known producer exporting the subject merchandise from Israel to the United States during the 1990 review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, NPL, and written rebuttal comments from the petitioners, the Monsanto Company and FMC Corporation. Because the petitioners' comments were solely in support of the Department's preliminary results, we have only discussed respondent's comments.

Comment 1: NPL argues that the Department's methodology for calculating the subsidy from ECIL grants to the Arad and Zin plants overstates the benefit actually conferred on industrial phosphoric acid (IPA). The problem arises primarily because the Department calculates the per-ton benefit on IPA based on ECIL grants received by the Arad and Zin plants and then multiplies this per-ton benefit by the total quantity of IPA sold to all markets. This total subsidy is then divided by the value of NPL's total sales of IPA to all markets to arrive at the *ad valorem* subsidy rate from these ECIL

grants. Respondent contends that the Department's methodology fails to take into account that some of the IPA sold is produced from leftover rock phosphate from the closed mine at Machtesh. NPL proposes to correct this distortion by determining the ratio of rock phosphate from Arad and Zin actually used in IPA production during a particular year over rock phosphate extracted from Arad and Zin in that same year.

Department's Position: Although the respondent provided quantity figures for the production of rock phosphate at Arad and Zin, respondent did not provide the Department with a specific figure for the quantity of rock used from Machtesh. Therefore, based on the information available to the Department, we consider it more appropriate to continue to apply our previous methodology, as in the past three administrative reviews, to calculate the benefits obtained by NPL from ECIL grants. In addition, the methodology proposed by the respondent relies on the amount of phosphate rock processed and not on actual sales of IPA to determine the amount of the subsidy during the review period. We consider our methodology, based on actual sales, to be a more accurate measure of the benefits received on the subject merchandise during the review period.

Comment 2: NPL maintains that the Department did not properly sum the benefits under the four programs to arrive at a net subsidy. The Department arrived at the net subsidy by rounding each of the four benefits individually and then adding them. NPL believes that the Department should add the four benefits and then round the total. Also, the benefit accruing from the Long-term Industrial Development Loans should be rounded down to zero percent, not up to 0.01 percent.

Department's Position: We disagree. It is the Department's standard methodology, as followed in the past three administrative reviews, to calculate the benefits from each individual subsidy program. These individual subsidy findings are then summed to arrive at a total net subsidy. Respondent has provided no reason for the Department to change its methodology.

The respondent also suggests that the Department incorrectly rounded the benefit derived from the Long-term Industrial Development Loans. However, the figure provided in NPL's case brief does not correspond to the one appearing in the calculation memo provided to respondent following publication of the preliminary results of this review. Therefore, the Department correctly rounded the benefit up to 0.01 percent.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be 12.11 percent *ad valorem* for all companies during the period January 1, 1990 through December 31, 1990.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department will instruct the Customs Service to collect a cash deposit of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This cash deposit shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20829 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-815]

Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3530 or 377-4162, respectively.

Countervailing Duty Orders

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on July 13, 1992, the Department of Commerce (the Department) made its final determinations that producers or exporters in Canada of pure magnesium and alloy magnesium receive benefits which constitute subsidies within the meaning of the countervailing duty law (57 FR 30946). On August 19, 1992, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its determinations that imports of pure magnesium and alloy magnesium are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of pure magnesium and alloy magnesium from Canada. These countervailing duties will be assessed on all unliquidated entries of pure magnesium and alloy magnesium from Canada which were entered, or withdrawn from warehouse, for consumption, on or after December 6, 1991, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 4, 1992, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of these orders in the **Federal Register.** Entries of pure magnesium and alloy magnesium made on or after April 4, 1992, and prior to the date of publication of these orders in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 21.61 percent *ad valorem* for all entries of pure magnesium and alloy magnesium from Canada, except entries from Timminco Limited which are excluded from these orders.

These determinations constitute countervailing duty orders with respect to pure magnesium and alloy magnesium from Canada pursuant to 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Investigations

The products covered by these orders are pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. Secondary and granular magnesium are not included in these orders.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence administrative reviews of these orders. For further information regarding these reviews, contact Barbara Tillman at (202) 377–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e).

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–20830 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certification of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84–5A012."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #84–00012, which was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988), September 21, 1988 (53 FR 37628, September 27, 1988), and September 20, 1989 (54 FR 39454, September 26, 1989).

Summary of the Application

Applicant: Northwest Fruit Exporters, 1005 Tieton Drive, Yakima, Washington, 98902.

Contact: Kenneth Severn, Secretary/Treasurer, Telephone: (509) 453–4837.

Application No.: 84–5A012.

Date Deemed Submitted: August 21, 1992.

Request For Amended Conduct: Northwest Fruit Exporters seeks to amend its certificate to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Auvil Fruit Company, Orondo, WA and Columbia Reach Pack, Yakima, WA.; and

2. Delete the following company as a "Member" of the certificate: Amerifresh, Wenatchee, WA.

Dated: August 25, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–20820 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DR–M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92–00007.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to EXIM International. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*

All Products.

2. *Services*

All Services.

3. *Technology Rights*

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)*

Export Trade Facilitation Services including professional services in the

areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Marina Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Service, licensing of Technology Rights and provision of Export Trade Facilitation Services, EXIM, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. EXIM and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by EXIM with its distributors in Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, EXIM will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. EXIM will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine whether the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate continue to comply with the standards of Section 303(a) of the Act.

Definitions

"Supplier" means a person who produces, provides, licenses, or sells Products, Services, Technology Rights or Export Trade Facilitation Services.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 24, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-20821 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR part 301, we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-099. *Applicant:* Boston College, 140 Commonwealth Avenue, Chestnut Hill, MA 02167. *Instrument:* EPR Spectrometer, Model ECS 106. *Manufacturer:* Bruker Instruments Inc., Germany. *Intended Use:* The instrument will be used to carry out studies on four classes of compounds: (i) Ru(III) complexes of nucleotides and nucleic acids, (ii) binuclear technetium species, (iii) polynuclear manganese oxo complexes, and (iv) vanadium (II) and (IV) compounds. For all of the compound types above, epr spectroscopy will be useful in determining electronic structure. This information in turn can be used to assess the three dimensional structure of the molecule of interest. *Application Received by Commissioner of Customs:* June 26, 1992.

Docket Numbers: 92-102 and 92-103. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 4700 Avenue U, Galveston, TX 77551-5997. *Instrument:* (3) Electronic Digital Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instruments will be used in an area of research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. *Applications Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92-104. *Applicant:* Auburn University, 231 Leach Center, Auburn University, AL 36849. *Instrument:* Four Frame X-ray Imaging System. *Manufacturer:* Ingenieurburo Armin Schulz, Germany. *Intended Use:* The instrument will be used in the study of the physics of atoms found in vacuum spark discharges. The phenomenon to be investigated is concerned with the X-ray emission from highly compact, high temperature plasma pinches driven by magnetic compression in linear, high electric current, pulsed discharges. *Application Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92-105. *Applicant:* University of Miami, RSMAS/CIMAS,

4600 Rickenbacker Causeway, Miami, FL 33149. *Instrument:* Radar. *Manufacturer:* Marex Technology Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the temporal and spatial distribution of coastal ocean currents at both very high and moderate spatial and temporal resolution. *Application Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92–106. *Applicant:* City of Chicago, 1000 East Ohio Street, Chicago, IL 60611. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for studies of individual particles from raw and treated water sources. Experiments will consist of particle studies to examine the nature of materials found in lake water, comparisons with materials added in treatment processes, and culturing and identifying strains of microorganisms obtained from water. *Application Received by Commissioner of Customs:* July 8, 1992.

Docket Number: 92–107. *Applicant:* Utah State University, Logan, UT 84322–5230. *Instrument:* Portable Pulse-Modulated Chlorophyll Fluorometer, Model PAM 2000. *Manufacturer:* Walz Mess- und Regeltachnik, Germany. *Intended Use:* The instrument will be used in research on the photosynthetic characteristics of terrestrial higher plants in both laboratory and field experiments. These experiments will consist of: (1) Exposing plants to supplemental ultraviolet-B radiation in the field to determine the sensitivity of the photosynthetic apparatus under field conditions, (2) laboratory experiments where the effectiveness of the different ultraviolet wavelengths in causing damage to the photosynthetic apparatus will be assessed and (3) examination of the inhibition of photosynthesis by low humidities, by the resulting water stress, and by the water stress induced changes in phytohormones. In addition, the instrument will be used for educational purposes in the courses: Plant-Water Relationships, Physiological Ecology of Plants Practicum, Photosynthesis and Plant Physiology. *Application Received by Commissioner of Customs:* July 7, 1992.

Docket Number: 92–108. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Spectrometer System. *Manufacturer:* Turner Scientific, United Kingdom. *Intended Use:* The instrument will be used for studies of waste streams from the TA–55 facility. Experiments are conducted to collect various samples of the waste streams, perform semi-quantitative analysis for surveying contents followed by quantitative analysis of specific metals. *Application Received by Commissioner of Customs:* July 7, 1992.

Docket Number: 92–109. *Applicant:* Stanford University, P.O. Box 4409, Stanford, CA 94305. *Instrument:* Cryostream Nitrogen Gas Cooler System. *Manufacturer:* Stoe Diffraction Systems, United Kingdom. *Intended Use:* The instrument will be used to flash freeze protein crystals for x-ray studies of protein and DNA structures. *Application Received by Commissioner of Customs:* July 9, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–20831 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

August 24, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 360 and 361 are being increased for swing, reducing the limit for Categories 359–C/659–C to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14563, published on April 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend the directive dated April 15, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
359–C/659–C [2]	810,395 kilograms.
360	1,745,687 numbers.
361	2,358,208 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–20874 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Number: Application of MSC Afloat Employment; MSC 12310/1; OMB Number 0703–0014.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 2 hours.

Responses per Respondent: 11,700.

Annual Burden Hours: 23,400.

Annual Responses: 11,700.

Needs and Uses: The MSC Afloat Application, MSC 12310/1, is used in lieu of SF–171 because there is a need for specific license or certification information. It is also used by applicants to provide past shipboard experience and marine related education.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 25, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20871 Filed 8–28–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Advisory Committee on Service Academy Athletic Programs; Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Service Academy Athletic Programs is scheduled to be held from 8:30 a.m. to 4:30 p.m. on September 29, 1992 and from 8:30 a.m. to 11:30 a.m. on September 30, 1992. The meeting will be held in the Superintendent's conference room, Building 600, United States Military Academy, West Point, New York. The purpose of the meeting is to review the administration of athletic programs at the U.S. Military, Naval and Air Force Academies. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Captain Mark A. Zamberlan, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9272, no later than September 18, 1992.

Dated: August 25, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20870 Filed 8–28–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Maj. Gen Jay W. Kelley
Brig. Gen Harold H. Rhoden

Air Staff

Maj. Gen Marvin S. Ervin
Brig. Gen William M. Douglas
Brig. Gen Norman G. Lezy
Brig. Gen Glenn A. Profitt, II
Dr. Richard P. Hallion, Jr.

Air Force Materiel Command

Brig. Gen Dennis K. Hummel

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–20845 Filed 8–28–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 14–18 September 1992.

Time: 0800–1700 Hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Summer Study panel on "Command and Control on the Move (C2OTM)" will hold a series of closed meetings preparing for their final report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–20880 Filed 8–28–92; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 24 September 1992.

Time: 0800–1630 Hours.

Place: White Sands Missile Range, NM.

Agenda: The Army Science Board's Analysis, Test and Evaluation Issue Group will meet to discuss professional development of test and evaluation civilian workforce and investigate procedures for improving the quality and timeliness of data at reduced resource levels. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–20881 Filed 8–28–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Solicitation for Financial Assistance Applications; Demonstration of Economic Benefits of Improved Electrical Power Generating Systems for Geothermal Applications

AGENCY: Department of Energy (DOE).

ACTION: Solicitation for Cooperative Agreement Applications Number DE–PS02–92CH10516.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE

Financial Assistance Rules, 10 CFR part 600, announces the availability of Solicitation for Cooperative Agreements No. DE–PS02–92CH01516 to demonstrate the economic benefits of improved electrical power generating systems for geothermal applications. The Catalog of Federal Domestic Assistance number for this program is 81.087. This solicitation replaces solicitation number DE–PS07–92ID13179 previously advertised by DOE's Idaho Operations Office. If a request was made in response to the CBD announcements, no request is required under this announcement.

DATES: The solicitation will be issued on or about September 15, 1992 and will include complete information on funding, eligibility, application preparation, selection criteria and proposal evaluation. Closing date for the solicitation will be approximately 45 days after issuance.

ADDRESSES: To obtain a copy of the solicitation write to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this solicitation is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), is seeking financial assistance applications, for cost sharing Cooperative Agreements to perform demonstration(s) of economic benefits relating to improved electrical power generating systems for geothermal applications. The purpose of the program is to promote geothermal technologies to obtain commercial feasibility.

One goal of the program, and the purpose of this solicitation, is to reduce the life-cycle cost of producing electricity from geothermal resources, thereby realizing economic benefits.

The economic benefits to be demonstrated by applicants responding to this solicitation must be derived from improvements in the technology of generating electricity from geothermal energy and must address either: (a) Increasing power plant efficiency; (b) reducing plant capital costs; (c) reducing plant operating and maintenance costs or; (d) increasing plant reliability. The improvements may be effected by constructing new power plant facilities for generation of electricity from geothermal energy or by retrofitting existing facilities. Activities relating to geothermal reservoir development e.g., exploration, resource assessment, drilling and completion of wells as opposed to power plant construction and operation will not be considered for award of a Cooperative Agreement under this solicitation.

Proposed projects are expected to demonstrate an innovative concept which is not currently used in commercial geothermal power plants. The technology demonstration must be applicable to performance of a commercial unit. Commercial demonstration does not mean that the demonstration must be performed on a commercial-size plant, but that the equipment, cost and performance characteristics can be readily extrapolated to commercial scale. The results of the project will be required to be presented in a form which will demonstrate the improvement's impact on economic operation of a geothermal electric power generating system.

A final report will be required at the completion of the project which details the economic benefits of the improvement. This report will be prepared when sufficient data are available to actually demonstrate the conclusion. The report will be of a form which can be disseminated to the geothermal industry to show the economic benefit of the concept. An annual progress report will be required at the conclusion of each funded year which details results of the project to date.

It is anticipated that selected projects will be for up to a three year duration and will be accomplished under Cooperative Agreement instruments. At least one agreement will be awarded as a result of the solicitation. Participants will be required to share at least 50 percent of the value of the agreement. No fee or profit will be paid to cooperative agreement recipients.

DOE anticipates that up to $3,000,000 will be available from DOE for support of activities during the first year of the selected program(s). Similar funding levels are anticipated for the two following years, however, all DOE funding is subject to availability. As a consequence, the selected project(s) resulting from this solicitation will be required to be designed such that should no additional DOE funding be available in subsequent years, useful output specifically advancing the purposes of this project as defined will be obtained (comprehensive reports similar to final reports will be required at the end of each budget period).

All responsible sources may submit an application and all submitted applications will be considered.

Issued in Chicago, Illinois on August 20, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92–20918 Filed 8–28–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award, Intent To Award Grant to the National Academy of Sciences

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the National Academy of Sciences (NAS), Washington, DC, under Grant Number DE–PG01–92CE34100. The purpose of the grant is to support a study to assess the potential health risks from exposure to electromagnetic fields (EMFs). This effort will have a total estimated cost of $600,000 to be provided by the DOE. The grant follows a congressional recommendation in House Conference Report 102–177 on House Bill 2427, which was later enacted under Public Law 102–104, Energy and Water Development Appropriations Act, 1992.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and administration, ATTN: Jeffrey R. Dulberg, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the NAS for a 27 month study which will: (1) Examine existing data on biological effects of EMFs to determine their applicability to risk assessment; (2) hold workshops to learn about current bioelectromagnetic research being performed and the data being produced by that research; (3) invite experts from scientific areas that appear to be important in the bioelectromagnetic arena, but who may not be doing bioelectromagnetic research, to present the latest information in those areas; (4) identify specific research agenda needed to answer unresolved issues; and, (5) identify a strategy to institute the research agenda. The study will result in two reports covering the first 18 months and the second 9 months of the study. The reports' topics will include: (1) An analysis of the available

dosimetric, experimental, and epidemiological data relating to health effects associated with exposure to EMFs routinely encountered in residential settings; (2) if possible, a comparison of the assessment of risk with other commonly encountered risks; and (3) recommendations of research needed to address unresolved issues and for a strategy to implement the research agenda.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an unbiased evaluation of the data on the biological effects of EMFs and bringing credibility to estimates of health risks that might be associated with EMF exposure. The reports will be distributed to Congress, the DOE, other Federal agencies, State and local governments, and the public.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach for generating and disseminating an independent evaluation of the potential health risks associated with exposure to EMFs. Accordingly, this effort by the NAS will address a concern expressed by both Congress and the general public.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92-20917 Filed 8-28-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-08529T Louisiana-14]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1992.

Take notice that on August 21, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a part of the Nacatoch Formation underlying parts of the Grogan and Red River Bull Bayou Fields in DeSoto and Natchitoches Parishes, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as:

T11N-R10W, Sections 6, 7, 18, and 19

T11N-R11W, Sections 13, 23-26, 34-35

The notice of determination also contains Louisiana's findings that the referenced part of the Nacatoch Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20849 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08527T Oklahoma-25]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1992.

Take notice that on August 21, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Marmaton Formation underlying a portion of Roger Mills County, Oklahoma qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Section 31, Township 15 North, Range 21 West; Sections 1-19, Township 14 North, Range 22 West; Sections 7-36, Township 14 North, Range 23 West and Sections 7-36, Township 14 North, Range 24 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Marmaton Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20848 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08528T Texas-66]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1992.

Take notice that on August 21, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Austin Chalk Formation in portions of Brazos and Burleson Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Austin Chalk Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol State, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Austin Chalk Formation is located in Brazos and Burleson Counties, Texas, within Railroad Commission District 3.

Brazos County

B.B.B. & C.R.R. Co.—A-81
B.B.B. & C.R.R. Co.—A-82
Exekiel Clampitt—A-91
Francis Clampitt—A-102
Susanah Cummins—A-93
Samuel Davidson—A-13
W.L. Ellis—A-109
W.L. Ellis—A-116
Ephram Evans—A-118
Jessie Evans—A-112
J. Hope—A-23
James Hope—A-22
B. McGregor—A-170

John Millican—A–162
W.T. Millican—A–163
W.L. Millican—A–174
Willis Millican—A–177
D.B. Posey—A–189
James C. Stuteville—A–216
Walter Sutherland—A–55

Burleson County

Wm. W. Allen—A–66
S.F. Austin—A–300
John Brown—A–75
J.B. Chance—A–9
J. Chenowith—A–84
J.P. Cole—A–12
John P. Coles—A–94
H.C. Cooper—A–289
H.C. Cooper—A–290
H.C. Cooper—A–291
Walter R. Dallas—A–105
B.J. Dubose—A–103
James Fisher—A–23
David Frost—A–25
Jas. Gwinn—A–128
John H. Harrell—A–143
Wm. W. Hawkins—A–29
Alfred Kennon—A–32
H. Koontz—A–163
H. Koontz—A–164
S. Lawrence—A–36
Wm. McCary—A–169
Wm. McWilliams—A–39
J.F. Perry—A–44
Thomas B. Reese—A–206
Lott Shaw—A–225
Phillip Singleton—A–56
V. Urrutia—A–242
E.N. Wood—A–295
J. Ybarbo—A–260

[FR Doc. 92–20850 Filed 8–28–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RS92–16–000]

Florida Gas Transmission Co.; Change in Date for Prefiling Conference

August 25, 1992.

Take notice that the prefiling conference in the above-captioned proceeding scheduled to begin at 1:30 p.m. on September 2, 1992 and to continue on September 3, 1992, has been rescheduled for a later date. It will now begin at 1:30 p.m. on September 14, 1992, and continue on September 15, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

This change will not affect the informal settlement conference in Docket Nos. RP91–187–000 and CP91–2448–000, previously scheduled for September 2, 1992. That conference will be held as originally scheduled.

For additional information concerning the above-captioned docket, interested parties can call Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92–20851 Filed 8–28–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP91–143–000]

Great Lakes Gas Transmission Limited Partnership; Informal Settlement Conference

August 25, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, September 30, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo at (202) 208–2182 or John P. Roddy at (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 92–20853 Filed 8–28–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RS92–11–000]

Texas Eastern Transmission Corp.; Rescheduled Conference

August 25, 1992.

Take notice that the conference scheduled for August 26, 1992, at 10 a.m., at The Department of Health and Human Services Auditorium, 300 Independence Avenue, SW., Washington, DC, has been cancelled. The conference is rescheduled for September 8–9, 1992 at a location to be announced. The conference will begin at 1 p.m. on September 8, 1992. The conference is being convened so that Texas Eastern can explain the tariff and rate changes made in the August 14, 1992 draft revisions package which would revise Texas Eastern's June 8, 1992 compliance filing. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208–2794.

Lois D. Cashell,

Secretary.

[FR Doc. 92–20852 Filed 8–28–92; 8:45 am]
BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

[CE-Support Office Boston]

Financial Assistance Award; Intent To Award Grant to New England Governors' Conference, Inc.

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Persuant to 10 CFR 600.6(b)(2) and 600.31(c), the Department of Energy, Chicago Operations, through the Boston Support Office intends to award a noncompetitive renewal grant to the New England Governors' Conference (NEGC). The grant will provide funding in the amount of $200,000 for phase II of a regional energy strategy. This work will build on the success of Phase I, which established a steering committee, established objectives, analyzed existing planning capabilities, and designed and submitted a strategy proposal. The DOE is pleased with the effort thus far. During Phase II the NGC proposes to establish an integrated regional energy planning process. The goals of the energy strategy include increased efficiency, protecting the environment, ensuring adequate supplies and encouraging fuel diversity.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The budget period of this grant shall be twelve (12) months and the project period will be extended to September 30, 1995.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office, Attn: Mr. Hugh Saussy, Jr., One Congress Street, Boston, MA, 02114–2021.

Issued in Chicago, Illinois on August 20, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92–20919 Filed 8–28–92; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Order Confirming and Approving an Extension of the Parker-Davis Project Rates for Firm Power and Firm and Nonfirm Transmission Service

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA-57 extending the existing Parker-Davis Project (P-DP) rate schedules; for firm power PD-F3, firm transmission PD-NFT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects (SLCA/IP) PD-FCT3, until superseded by new P-DP rate schedules, but for not more than 1-year; republication.

SUMMARY: This notice replaces the document published on August 25, 1992. (57 FR 38501).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352-2650.

SUPPLEMENTARY INFORMATION: Power and Transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of Department of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Pursuant to Delegation Order No. 0204-108, FERC, in the order issued November 15, 1990, in Docket No. EF90-5041-000, confirmed and approved Rate Schedules; PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service and PD-FCT3 for Transmission Service of SLCA/IP Power. The rate schedules were approved for the 2-year period October 1, 1990, through September 30, 1992.

Western proposes to extend the existing rates for P-DP firm power and firm and nonfirm transmission service until such time as new P-DP rate schedules supersede the existing P-DP rate schedules, but for not more than 1-year. This proposal resulted from responses to public comments stating that additional time is needed to comment on unresolved issues relative to the forthcoming P-DP rate adjustments. The public comment and consultation period for the P-DP rate adjustment has been extended to September 28, 1992 (57 FR 34776) and the anticipated effective date for the proposed P-DP rates is in the first half of FY 1993.

The purpose of Rate Order No. WAPA-57 is to extend the P-DP rate schedules PD-F3, PD-FT3, PD-NFT3 and PD-FCT3 until such time as new P-DP rate schedules supersede the existing P-DP rate schedules, but for not more than 1-year.

Issued in Washington, DC, August 19, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In the matter of: Western Area Power Administration Rate Adjustment for Parker-Davis Project.

[Rate Order No. WAPA-57]

Order Confirming and Approving an Extension of Rates for the Parker-Davis Project Firm Power and Firm and Nonfirm Transmission Service

August 19, 1992.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101 *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, ch. 1093, 372 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Background

Pursuant to Delegation Order No. 0204-108, the FERC, in the order issued November 15, 1990, in Docket No. EF90-5041-000, confirmed and approved Parker-Davis Project (P-DP) rate schedules; PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service, and PD-FCT3 for transmission service of Salt Lake City Area Integrated Projects Power, administered by the Western's Phoenix Area. The rates were approved for the period from October 1, 1990, through September 30, 1992.

Discussion

On May 8, 1992, Western's Phoenix Area published its proposal in the Federal Register to adjust the P-DP rates for firm power and firm and nonfirm transmission service. In response to public comments, it was determined by Western, that additional time is needed for customers to comment on unresolved issues relating to the forthcoming P-DP rate adjustments. The public comment and consultation period has been extended to September 28, 1992 (57 FR 34776, August 6, 1992) and the anticipated effective date on the proposed rates is in the first half of FY 1993. Therefore, Western proposes to extend the existing P-DP rates for firm power and firm and nonfirm transmission service until such time new P-DP rate schedules supersedes the existing P-DP rate schedules, but for not more than 1-year.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby confirm and approve the extension of the P-DP rate schedules; for firm power PD-F3, firm transmission PD-FT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects PD-FCT3, until superseded by new P-DP rate schedules for a period effective October 1, 1992, until superseded by new P-DP rate schedules, but for not more than 1 year.

Issued in Washington, DC, August 19, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-20920 Filed 8-28-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4201-1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on August 5, 1992, the Environmental Protection Agency received an application from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, Colorado 80112-5189, to determine if their Monitor Labs Model 9841 Nitrogen Oxides Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92-20903 Filed 8-28-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4200-5]

Public Water System Supervision Program: Program Revision for the State of Iowa

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Iowa is revising its approved State Public Water System Supervision (PWSS) Program. Iowa has adopted regulations for (1) filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria published by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and *E. coli*) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and *E. coli*) published by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon a thorough evaluation of Iowa's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted within thirty (30) days of the date of this Notice to the Regional Administrator, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Iowa. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Iowa. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination are available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Iowa Department of Natural Resources Surface and Groundwater Protection Bureau, Wallace State Office Building, 700 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Pat Ritchey, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551-7409.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primacy Drinking Water Regulations.

Dated: June 11, 1992.

Morris Kay,

Regional Administrator, EPA, Region VII.

[FR Doc. 92-20728 Filed 8-28-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-62119; FRL-4082-4]

Accredited Training Programs under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the National Directory of AHERA Accredited Courses (NDAAC).

SUMMARY: EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The August 31, 1992 directory, which supersedes the version released on May 29, 1992, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: NDAAC Clearinghouse, c/o ATLIS Federal Services, 6011 Executive Blvd., Rockville, MD 20852, Telephone: (301) 984-1929.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, contractors who inspect or prepare management plans, or design or conduct response actions with respect to friable asbestos-containing materials in schools, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved State accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991 (56 FR 43064). EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: August 3, 1992.

Joseph A. Cara,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–19652 Filed 8–28–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4198–8]

Proposed Assessment of Clean Water Act Class II Administrative Penalty to Cargill Incorporated and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Thunderbird Management, Inc. (Shelby Wastewater Treatment Plant), 6006 N. 83rd St., #208, Glendale, AZ 85303, Docket No. IX–FY92–16; filed on August 25, 1992 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $60,000, for discharges of pollutants without an NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed on this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: August 18, 1992.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 92–20900 Filed 8–28–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public Notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Kenneth N. Blincow, John H. Fisher, Gary R. Belair, and Deborah J. Hall.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind of nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledged and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: August 26, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-20913 Filed 8-28-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Mitsui O.S.K./Hoegh-Ugland Auto Liners, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011384.

Title: Mitsui O.S.K./Hoegh-Ugland Auto Liners Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed Agreement will authorize the parties to charter space from one another, consult and agree upon sailing schedules, service frequency, ports to be served and port rotation in the trade from ports in the United Kingdom and North Europe (Bordeaux to Wallhann, inclusive) to United States Atlantic, Pacific and Gulf Coasts.

Agreement No.: 224-010839-005.

Title: Port of Seattle/American President Lines, Ltd. Terminal Agreement.

Parties: Port of Seattle ("Port") American President Lines, Ltd. ("APL").

Synopsis: The amendment provides for the repayment by APL to the Port for the cost of three container cranes, redescribes the five Port-owned cranes used by APL and acknowledges APL's intent to install a sixth container crane owned by APL.

Agreement No.: 224-200405-002.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Incentive Wharfage Agreement.

Parties: Tampa Port Authority ("Port") Tampa Bay International Terminals, Inc. ("TBIT").

Synopsis: This modification extends the wharfage incentive agreement wherein the Port will charge reduced wharfage rates to TBIT on shipments of paper waste, subject to a minimum volume of 4,000 net tons.

Agreement No.: 224-200510-003.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Terminal Agreement.

Parties: Tampa Port Authority Tampa Bay International Terminals, Inc.

Synopsis: This modification amends the definition of iron and steel commodities on which the incentive wharfage rate applies from "steel billets and reinforcing bars, for export" to "iron or steel articles, for exports."

Agreement No.: 224-200692.

Title: New Orleans/ABB Combustion Engineering Terminal Agreement.

Parties: Port of New Orleans ("Port") ABB Combustion Engineering Systems ("ABB").

Synopsis: The Agreement concerns free time and demurrage assessments applicable to certain project cargo which ABB will ship through the Port's facilities.

Dated: August 25, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-20818 Filed 8-28-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in

lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Acquisition Corporation, Leawood, Kansas; to become a bank holding company by acquiring 51.54 percent of the voting shares of LeavCorp., Inc., Leavenworth, Kansas, and thereby indirectly acquire Leavenworth National Bank and Trust Co., Leavenworth, Kansas.

2. Carrollton Bancshares Corporation, Carrollton, Missouri; to become a bank holding company by acquiring First Carrollton Bancshares, Inc., Carrollton, Missouri, and thereby indirectly acquire First National Bank of Carrollton, Carrollton, Missouri.

3. Farmers National Bancshares, Inc., Stafford, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Stafford, Stafford, Kansas, and Mid-Kansas Financial Corp., Buhler, Kansas, and thereby indirectly acquire Buhler State Bank, Buhler, Kansas.

4. Upper Rio Grande Bank Corporation, Del Norte, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of The Rio Grande County Bank, Del Norte, Colorado.

Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20861 Filed 8-28-92; 8:45 am]

BILLING CODE 6210-01-F

Commercial Bancshares, Inc. Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Commercial Bancshares, Inc. Employee Stock Ownership Trust, Parkersburg, West Virginia; to acquire 15 percent of the voting shares of Commercial Bancshares, Inc., Parkersburg, West Virginia, and thereby indirectly acquire Commercial Banking and Trust Company, Parkersburg, West Virginia; Jackson County Bank, Ravenswood, West Virginia; Farmers and Merchants Bank of Ritchie County, Hannisville, West Virginia; and The Dime Bank, Marietta, Ohio.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. James William Collins, McAllen, Texas; to acquire 27.09 percent of the voting shares of Gulf Southwest Bancorp, Inc., Houston, Texas, and thereby indirectly acquire Merchants Bank, Houston, Texas.

2. James William Collins, McAllen, Texas; to acquire 12.34 percent of the voting shares of Texas Regional Bancshares, Inc., McAllen, Texas, and thereby indirectly acquire Texas State Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20862 Filed 8-28-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration, is amended to reflect a minor realignment in the Office of Human Resources, Office of Budget and Administration, Office of the Associate Administrator for Management.

The specific changes to part F are as follows:

• Section FH.20.a.1.b., Division of Staffing and Employee Services (FHA62), is deleted in its entirety and replaced with the new section. The new section reads as follows:

b. Division of Staffing and Employee Services (FHA64)

• Provides service to all central office HCFA components in the areas of recruitment, in-service staffing, selective placement, and pre-employment investigations for all types of appointments and all occupational classes and levels of work (except Senior Executive Service, Schedule C, and related appointments).

• Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optimal staffing mixes, recruitment sources, and qualification factors.

• Interprets regulations, guides, directives, and bulletins related to staffing and personnel services.

• Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population.

• Plans and controls the central system for all personnel and payroll employee transaction processes, (except U.S. Savings Bonds), serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements and other related areas.

• Plans, administers, and evaluates HCFA-wide employee benefits, health and wellness program activities.

• Provides general employee counseling on such matters as retirement, life insurance, health plans, worker's compensation claims, and related areas.

• Serves as the central HCFA reference point for inquires, guidance and interpretation on employee relations matters.

• Processes insurance claims and annuity applications for retirees and survivors of deceased employees. Processes the full range of employee benefit and payroll transaction documents, with the exception of U.S. Savings Bonds.

• Directs programs for occupational health services, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the Agency's contract for the Employee Assistance Program. Directs and administers HCFA's child care initiative. Directs the Agency's Voluntary Leave Transfer and Video Display Terminal Eye Care Program.

• Under direction of the HCFA Deputy Ethics Officer, plans and administers the entire ethics program for

both Central and Regional Offices. Reviews financial disclosure reports prior to departmental submittal and coordinates outside activities requests and approvals.

• Section FH.20.A.1.d., Labor/Management Relations Staff, is deleted in its entirety and replaced with the new section. The new section reads as follows:

d. Labor and Employee Relations Staff (FHA6–3)

• Plans, directs, and administers HCFA-wide labor relations activities including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, and regulations.

• Serves as Agency representatives in dealing with the Department of Health and Human Services, other Federal agencies, employee and supervisory organizations, and third-party representatives.

• Directs the Agency disciplinary and adverse action program. Provides procedural advice in the processing of grievances, including negotiations in the resolution of grievances and appeals under Agency and negotiated grievance procedures/agreements.

• Directs the Agency performance improvement and corrective action plan programs. Provides procedural advice in establishing and administering corrective plans and represents the Agency in related grievance and appeal processes.

• Directs the Agency personnel security liaison function. Provides procedural advice on all issues involving employee suitability and/or retention relevant to pre-employment or off-duty conduct/activities (exclusive of SES and Schedule C employees).

• Formulates HCFA-wide policy regarding the development, implementation, and evaluation of labor relations activities. Provides management advisory service on all labor/management relations issues.

• Directs the development and implementation of a labor and employee relations training program in conjunction with other Office of Human Resources components. Plans and coordinates the integration concerning the labor relations program with other personnel management functions and related management assistance activities.

Dated: August 21, 1992.

Robert A. Streimer,

Associate Administrator for Management, Health Care Financing Administration.

[FR Doc. 92–20872 Filed 8–28–92; 8:45 am]

BILLING CODE 120-01-M

National Institutes of Health

Prospective Grant of Exclusive License; Adeno-Associated Virus (AAV) Vectors for Gene Therapy

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,797,368 (SN 06/712,236), entitled "Adeno-Associated Virus As Eukaryotic Expression Vector" to Theragen, Inc., of Ann Arbor, Michigan. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the fields of use of gene therapy treatments for metabolic disease, joint and connective tissue disorders, and nervous system diseases. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent to be licensed describes a novel expression vector based on the parvovirus, adeno-associated virus (AAV), which is valuable for the stable maintenance or expression of DNA sequences or genes in eukaryotic cells. The use of many previously available virus-based eukaryotic expression vectors has been limited because they do not integrate foreign DNA into the host genome at high frequency and are not easily rescued from their host. This AAV-based expression vector is easily rescued from the host and allows the host to express the foreign DNA or genes at high frequency.

ADDRESSES: Requests for a copy of this patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: August 11, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92–20839 Filed 8–28–92; 8:45 am]

BILLING CODE 4140-01-M

Prospective Grant of Exclusive License; Vectors for Gene Therapy Treatment of AIDS

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application SN 07/596,299 entitled "Vector With Multiple Target Response Elements Affecting Gene Expression" and U.S. Patent Application SN 07/707,055 entitled "Eukaryotic Expression Vectors With Regulation Of RNA Processing" to Genetic Therapy, Inc. of Gaithersburg, Maryland. The patent rights in these two inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the field of use of gene therapy for Acquired Immunodeficiency Syndrome (AIDS). This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application SN 07/596,299 outlines the design and construction of DNA sequences that will inhibit viral replication through competitive inhibition of function and down-regulating HIV–1 LTR-directed gene expression. Inhibition is mediated via the product of transcription of the newly constructed vector. The vector product is directed against the AIDS virus (HIV) and may be used in vaccine development (intracellular immunization) and as a therapeutic agent for treating viral infections. Unlike other similar vectors, this invention is not limited by retroviral mutations or by variations between different HIV isolates.

U.S. Patent Application SN 07/707,555 describes a retroviral vector in which

intron-containing RNA is transported and packaged by the host cell. This unique vector contains the *rev*-RRE elements of primate lentiviruses, which control RNA processing and transport. Exploitation of these elements helps overcome the primary problems of previous vectors, i.e., low titer and inefficient gene/protein expression. The retroviral vector is proposed as a possible therapeutic device for various gene therapy treatments.

ADDRESS: Requests for copies of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: August 11, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92–20840 Filed 8–28–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–92–3443; FR–3206–N–02]

Deadline Extension, FY 1992 Fund Availability; Indian Applicants Under the HOME Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending the application deadline for Indian applicants for the HOME Investment Partnership Act, referred to as the Indian HOME program for those applicants who were adversely affected in their application submission as a result of the volcanic activities on August 18, 1992 which resulted in the closing of the Anchorage International Airport and stopping all air traffic. This same volcanic activity caused an official closure of the HUD Anchorage Office on the application due date August 19, 1992.

DATES: For qualified applicants, the application deadline is being extended from August 19, 1992 to September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Office of Indian Housing, U.S. Department of Housing and Urban Development, room 4140, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1015.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9800. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On June 15, 1992, HUD published Notices of Fund Availability announcing the availability of FY 1992 funds for the Indian Applicants under the HOME program (see 57 FR 26720).

In this Notice, HUD is extending the application deadline for submitting Indian HOME grant applications for those applicants who were adversely affected in the submission of applications as a result of the volcanic disturbances in the Anchorage Alaska area on and following August 18, 1992. For those applicants who qualify, the application deadline is being extended from August 19, 1992 to close of business on September 8, 1992.

An applicant may qualify for an extension of the application deadline for the Indian HOME grants if:

(A) The applicant submits a certification describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the certification adequately demonstrates that the applicant's ability to submit the HOME Grant application was substantially impaired as a result of the volcanic disturbances near the City of Anchorage, Alaska, on and following August 18, 1992. If HUD approves the certification, the application will be accepted for review.

A qualified applicant may submit such an application as long as the application is received by the HUD Anchorage field office by close of business on September 8, 1992. All submission requirements other than the date by which such applications must be received remain unaffected by this notice.

Dated: August 25, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–20812 Filed 8–28–92; 8:45 am]

BILLING CODE 4210–32–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927–5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the Title of the Form.

Type of Clearance: Revision of a currently approved collection.

Bureau/Office: Office of Proceedings.

Title of Form: Authority Application Series.

OMB Form Number: 3120–0047.

Agency Form Number: OP–1 (T), (TF), (P), (B), (FF), and (W).

Frequency: Initiated by applicant for new or expanded authority.

Respondents: Motor Carriers, Freight Forwarders, and Water Carriers.

No. of Respondents: 16,336.

Total Burden Hours: 45,510.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Proceedings.

Title of Form: Application for Temporary Authority, Under 49 U.S.C. 11349, to Operate Motor Carrier or Water Carrier Authorities or Properties.

OMB Form Number: 3120–0079.

Agency Form Number: OP–F–46.

Frequency: Initiated by applicant seeking to operate Motor carrier and Water Carrier Authorities or Properties.

Respondents: Authorities of Properties.

No. of Respondents: 54.

Total Burden Hours: 108.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92–20882 Filed 8–28–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32134]

The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights Exemption—Missouri Pacific Railroad Company

Missouri Pacific Railroad Company has agreed to grant overhead trackage rights to The Atchison, Topeka and Santa Fe Railway Company over approximately 196 miles of rail line, between milepost 245.52 at Ft. Worth, TX, and milepost 440.98 at Tecific, TX. The trackage rights will become effective on or after September 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Guy Vitello, The Atchison, Topeka and Santa Fe Railway Company, 1700 E. Golf Road, Schaumburg, IL 60173.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: August 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20884 Filed 8-28-92; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341; FERMI-2]

Detroit Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43 issued to the Detroit Edison Company (DECo or the licensee) for operation of the Fermi-2 facility, located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment is written in connection with the proposed core power level increase for the Fermi-2 facility in response to the licensee's application for a license amendment dated September 24, 1991 as modified January 31, and April 30, 1992. The proposed action would increase the rated core power level for Fermi-2 from the current level of 3293 megawatts thermal (MWt) to 3430 MWt. The Nuclear Steam Supply System (NSSS) power level would be increased accordingly. This represents an authorized power level increase of approximately 4.2 percent. This will require resetting of the safety relief valve setpoints to accommodate the slight operating pressure increase (less than 40 psi). Operating temperature will also increase slightly (less than 5 °F). The result of these changes will be an approximate 5 percent increase in NSSS power level. Plant instrumentation will be recalibrated to reflect the uprated power and core reload design will be modified to maintain the current 18-month reload cycle. This will include the use of higher enrichment fuel with extended burnup over that currently used. The licensee is planning to use fuel enrichments up to 4.8 weight percent U-235 burnup to 49,100 megawatt days per metric ton uranium (MWD/MTU). The licensee will implement these changes during the third refueling outage currently scheduled to begin September 12, 1992.

Additionally, at the recommendation of their NSSS vendor, the licensee is restoring a Reactor Core Isolation Cooling (RCIC) bypass line which had been previously removed. No changes will be made to the basic fuel design and fuel operating limits such as maximum average planar linear heat generation rate (MAPLHGR) or minimum critical power ratio (MCPR) will still be met at uprated power.

These changes will achieved by increasing core flow along existing flow control lines of the power/flow map thereby slightly increasing reactor vessel dome pressure. However, there will not be an increase in the maximum recirculation flow limit over the pre-uprate value.

The Need for the Proposed Action

The action would increase the thermal output by 138 megawatts thermal (MWt) which corresponds to approximately 44 megawatts electric (MWe). This would provide additional power to the grid which supplies the licensee's service area. The changes in higher fuel enrichment and extended burnup are necessary in order to maintain the current 18-month operating cycle.

Environmental Impacts of the Proposed Action

The effect of power uprate on radiological effluent or offsite doses, as evaluated in the Environmental Report, Operating Licensing Stages (ER/OL) and the NRC Final Environmental Statement (FES), is not significant. The original analyses were based on 104.2% (3430 MWt) of the licensed power (3293 MWt). The analyses for power uprate were performed at 102% of uprated power, resulting in a calculated increase of approximately 2% in effluents and doses, still well within 10 CFR Part 50, Appendix I, limits.

A slight increase in occupational radiation exposures may occur due to the slight increase in radiation levels in some areas of the plant, primarily due to increased activation products. The licensee used conservative assumptions; the design radiation source increase is proportional to the increase in power. Even with this assumption, neither individual nor cumulative occupational radiation exposure will be significantly increased. The expected increase would not be more than four to five percent of the current occupational exposure.

The non-radiological environmental impacts of the proposed power uprate were reviewed based on the information submitted in the ER/OL, the FES, and the requirements of the Environmental Protection Plan (EPP), Section 3.0 (Appendix B to the Operating License). Based on this review, it was concluded that the proposed uprate will not have significant impacts on the non-radiological effluent or releases and the plant will be operated in a manner as established by the FES. Existing Federal, State, and local regulatory permits presently in effect will not need to be modified as a result of power uprate.

There will not be any significant change in the types or amounts of any effluents that may be released offsite as a result of power uprate which have not already been evaluated in the FES or any significant increase in individual or cumulative occupational radiation exposure.

The Commission has completed its evaluation of the use of higher enriched fuel and extended burnup which would be necessary to support the proposed action.

The environmental consideration associated with reactor operation with higher enrichment and extended irradiation have been previously evaluated by the NRC staff for enrichment, up to 5.0 weight percent U-235 and burnup of up to 60,000 MWD/MTU (53 FR 60340 dated February 29, 1988).

The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 MWD/MTU, may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluent that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential non-radiological impacts of reactor operations with higher enrichment and extended irradiation, the proposed

changes to the Technical Specifications (TS) involving systems located within the restricted area are defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** on August 11, 1988 (53 FR 303555) as corrected August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed change for Fermi-2.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternatives would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated July 1972 related to operation of the Fermi-2 facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with regard to this action, see the application for amendment dated September 24, 1991 as modified January 31 and April 30, 1992, which is available for public inspection at the Commision's Public Document Room, 2120 L Street, NW., Washington, DC and at the Monroe County Public Library, 3700 South Custer Road, Monroe, Michigan 48166.

Dated at Rockville Maryland, this 24th day of August 1992.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–20856 Filed 8–28–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–70]

General Electric Co.; Consideration of Application for Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. TR–1, issued to the General Electric Company located on the Vallecitos Nuclear Center in Alemeda County, California.

The renewal would extend the expiration date of Facility License No. TR–1 to January 26, 2016, in accordance with the licensee's timely application for renewal dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. The license is a possession only type which allows the licensee to possess but not operate the facility. All fuel has been removed from the facility. The licensee is maintaining the facility in a safe storage condition and will develop a decommissioning plan that considers and integrates decommissioning activities for applicable nuclear facilities at the Vallecitos Nuclear Center site. The expiration date for this license renewal is the same as the expiration date for the ESADA Vallecitos Experimental Superheat Reactor (License No. DR–10, Docket No. 50–183), which is also in a possession only status at the Vallecitos Nuclear Center site. It is also anticipated that the expiration date for the Nuclear Test Reactor (License No. R–33, Docket No. 50–73), which has an operating license that is due to expire on October 31, 1997, will be extended to about the same date as that for the current license renewal. Therefore, the term of the license renewal is consistent with the licensee's development of plans on all applicable 10 CFR part 50 licensed facilities at the Vallecitos Nuclear Center.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 30, 1992, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leve of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the orders under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; General Electric Company; and publication date and page of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. G. E. Cunningham, Senior Licensing Engineer, Irradiation Processing, Vallecitos Nuclear Center, General Electric Company, P.O. Box 460, Pleasanton, California 94566.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 25th day of August 1992.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Powered Reactors, Decommissioning and Environmental, Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–20858 Filed 8–28–92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program Medically Underserved Areas for 1993

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1993.

SUMMARY: The Office of Personnel Management has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1993. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 1993, OPM has determined that the following States are Medically Underserved Areas under the FEHB Program: Alabama, Idaho, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. This list is the same as that for 1992, with the exception of the addition of South Carolina.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–20838 Filed 8–28–92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31079; International Series Release No. 439; File No. SR–Amex–92–25]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Warrants Based on a Basket of Japanese Traded Stocks

August 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants on an index of not less than twenty-five common stocks actively traded on the Tokyo Stock Exchange; and to add commentary .04 to Rule 411 to provide that such warrants shall only be sold to accounts approved for options trading pursuant to Exchange Rule 921.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Section 106 of the Amex Company Guide sets forth guidelines applicable to listing warrants based on foreign and domestic stock indexes. Pursuant to section 106, the Amex proposes to list and trade warrants on a basket of at least twenty-five common stocks actively traded on the Tokyo Stock Exchange (the "Basket").

The market value of the proposed basket of stocks will be calculated once a day based upon the closing prices of the component stocks on the Tokyo Stock Exchange and disseminated each morning before the opening of trading in the United States. At inception, each of the component stocks will be represented in the Basket in approximately equal percentages and market values.

The number of shares of each component stock in the Basket will remain fixed during the life of the warrant, except in the event of certain types of corporate actions such as (1) the payment of a cash dividend or distribution in excess of 10% of the price of the component security (as of the close of trading on the declaration date); or (ii) a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks in excess of 10% of the outstanding number of shares. In the event of such corporate actions, the number of shares of the security in the Basket may be adjusted to maintain the component's relative weight in the Basket at the level immediately prior to the corporate action. In the event of a merger, consolidation, dissolution or liquidation of a component security, the price of the component stock will be fixed at the closing price on the Tokyo Stock Exchange on the last day of trading. Advance notice of such action shall be disseminated by the Exchange. Thereafter, this stock will remain in the Basket and its value will remain static for the duration of the term of the warrant.

As noted above, the Basket will initially be constituted with not less than 25 component stocks. Each component stock will (1) have a minimum market value (in U.S. dollars) of at least $500 million, and (2) have an average monthly trading volume during the preceding six months of not less than 1,000,000 shares. In addition, not less than 75% of the component stocks will have a market value of at least $1 billion.

Warrant issues on the Basket will conform to the listing guidelines under section 106, which generally provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earning requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000. In addition, the warrant issuer and/or guarantor shall be expected to have shareholders' equity in excess of $100,000,000.

These warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (of not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Basket has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Basket has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

In addition, the Exchange proposes to add Commentary .04 to Exchange Rule 411 to ensure that transactions in warrants on the Basket will not be effected in a customer's account which has not been approved for options trading pursuant to Exchange Rule 921.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

[1] On August 19, 1992, the Amex submitted an amendment to increase the minimum number of stocks in the proposed index from 20 to 25. *See* letter from Benjamin D. Krause, Senior Vice President, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, dated August 19, 1992.

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20896 Filed 8-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31083; File No. SR-NASD-92-16]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Extension of Public Comment Period for Proposed Rule Change

August 24, 1992.

On May 1, 1992, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, that would enhance operation of the SelectNet service by adding Consolidated Quotation Service ("COS") securities to those eligible for trading through SelectNet. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 30961, July 27, 1992) and by publication in the **Federal Register** (57 FR 34158, August 3, 1992).

The Commission received three requests for extension of the period for public comment.[1] Commentators cited the complexity and significance of the filing. The NASD consented to an extension of the comment period until the middle of September.[2]

The Commission hereby extends the period for public comment on the proposed rule change for a period of 31 days, until September 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20894 Filed 8-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25614]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 26, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 14, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Official Bondholders' Committee of EUA Power Corporation

[70-8034]

The Official Bondholders' Committee of EUA Power Corporation ("Committee"), c/o State Street Bank and Trust Company, Corporate Trust Department, 5th Floor, One Heritage Drive, North Quincy, MA 02171-2128, has filed an application-declaration, as amended, including an amended plan of reorganization ("Plan") and a disclosure statement, under sections 11(f), 11(g), 12(c) and 12(d) of the Act and rules 42, 44, 62, 63 and 64 thereunder. The Committee requests the Commission to issue (1) a report on the Plan pursuant to section 11(g) that may be included in a solicitation of creditors for approval of the Plan in bankruptcy court proceedings,[1] and (2) an order approving the Plan and related transactions under section 11(f).[2]

EUA Power Corporation ("EUA Power"), a wholly-owned electric public-utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code, as amended ("Bankruptcy Code") on February 28, 1991 in the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court").[3] EUA Power's

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[1] See letters to Elizabeth MacGregor, Branch Chief, Division of Market Regulation, SEC, from Harry P. Day, Counsel, New York Stock Exchange, dated August 20, 1992; Michael Cavalier, Assistant General Counsel, American Stock Exchange, dated August 21, 1992; and Andrew M. Klein, Schiff, Hardin & Waite (representing Dempsey & Company), dated August 21, 1992.

[2] Telephone call from Robert E. Aber, Deputy General Counsel, NASD, to Elizabeth H. MacGregor, August 24, 1992.

[1] Section 11(g) requires that any solicitation for consent or authorization with respect to any reorganization plan of a registered holding company or any subsidiary company thereof be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

[2] Section 11(f) provides, in pertinent part, that "a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court."

[3] On July 2, 1991, the Bankruptcy Court refused to extend EUA Power's exclusive right to file a plan. On August 12, 1992, the Committee submitted the Plan and the disclosure statement to the Bankruptcy Court. No other party (including EUA Power), other than the Committee, has filed a plan of reorganization to date. The application-declaration states that the hearing on the disclosure statement and the confirmation hearing are scheduled for September 8, 1992 and October 5, 1992, respectively. After the Bankruptcy Court approves the disclosure statement, the Committee expects to solicit the creditors for their approval of the Plan in mid-September of 1992.

principal asset is an undivided 12.1324% interest in the Seabrook Nuclear Power project ("Seabrook") and the electricity associated therewith.[4] Since filing for bankruptcy, EUA Power has remained in operation as a debtor in possession pursuant to section 1107 of the Bankruptcy Code.

On March 14, 1991, the United States Trustee appointed the Committee as the duly authorized representative of the bondholders holding the Series B Notes and Series C Notes in the aggregate principal amount of approximately $280 million issued by EUA Power (collectively, "Notes"). EUA Power is in default under the indenture pursuant to which the Notes were issued. The Notes represent 100% of the secured claims against EUA Power and 93% of all claims listed by EUA Power.

Under the proposed Plan, all existing equity securities of EUA Power and certain contingent interest certificates issued by EUA Power in connection with the Series A and Series B Notes would be extinguished.[5] The reorganized EUA Power would then issue a single class of common stock [6] in exchange for the secured debt held by the bondholders equal to each bondholder's proportionate share of 95% of the new securities; [7] all unsecured claims, including deficiency claims of the bondholders, in an amount in excess of $25,000 ("Class Three Claims") would be converted into the remaining 5% of the new securities.[8] The taxing authorities with claims for unpaid real property taxes would receive payment in three equal annual installments of principal and interest, having a present value, as of the date the Plan becomes effective ("Effective Date"),[9] of not less than the value of the taxing authority's lien on EUA Power's interest in the property which secures such claims. The holders of unsecured claims of $25,000 or less would be paid 50% of the allowed amount of their claims in cash. The Plan contemplates that reorganized EUA Power would enter into the Plan Facility prior to the Effective Date. In addition, the Plan provides that reorganized EUA Power will retain a preference claim against EUA, as well as any other claims, including claims under a tax allocation agreement,[10] which EUA Power or its creditors may have against EUA or others for the benefit of reorganized EUA Power.[11] Upon consummation of the Plan, reorganized EUA Power will replace EUA Power as owner of the Seabrook interest.

After the confirmation of the Plan by the Bankruptcy Court, the Committee expects to enter into a commitment letter for the syndication of a secured revolving credit facility to finance the Plan.[12] The Plan Facility would be in a principal amount of not less than $45 million and not more than $60 million. It is anticipated that reorganized EUA Power would issue warrants to the participants in the Plan Facility in the amount of the economic value of up to 15% of the equity interests in reorganized EUA Power on a fully diluted basis, excluding, however, any value attributable to recoveries that may be received as a result of any litigations. Taking into account the various anticipated fees (including, (1) an initial commitment fee of $350,000, (2) a commitment fee, equal to 0.5% per annum of the average daily unused amount of the Plan Facility, (3) an agent's fee of $75,000 per annum, (4) a facility fee of $1.35 million, and (5) the expenses of professionals incurred in conducting due diligence for and documenting the Plan Facility) in connection with the Plan Facility and an interest rate at a floating rate of up to prime plus 7% per annum (with a minimum rate of 13% to 14%), the effective interest rate, with the base rate of 13.5%, is expected to be approximately 16.2% per annum.[13] It is expected that the Plan Facility will have a final maturity of no later than December 1995 and will be secured by a first priority lien and mortgage on all assets of reorganized EUA Power. In addition, EUA Power may be required to indemnify the lender and certain other indemnitees against any liabilities arising out of a commitment letter to provide the Plan Facility.

The Committee states that it will use its best efforts to obtain a Plan Facility on substantially the terms stated above. The Plan will not become effective unless such Plan Facility is obtained. In the event the Committee is unable to enter into a Plan Facility on above terms and the Committee deems it necessary to enter into a facility on terms materially less favorable than above terms, the Plan authorizes the Committee to enter into such other facility, subject to the approval of the Bankruptcy Court and any regulatory bodies with jurisdiction under

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[4] EUA Power financed its acquisition of its interest in Seabrook through the issuance and sale of $180 million of 17.5% secured notes ("Series A Notes") due November 15, 1991 pursuant to an indenture (HCAR Nos. 24244 and 24245; both dated November 21, 1986). As a result of its inability to pay the interest due on these notes, EUA Power exchanged and retired the Series A Notes for a new series of secured notes (Series B Notes") (HCAR No. 24641; May 12, 1988). The Series B Notes provide for the payment of interest thereunder through issuance of up to $100 million in additional secured notes ("Series C Notes") instead of cash. EUA Power has issued to date approximately $100 million of the Series C Notes (HCAR No. 24879; May 5, 1989).

[5] Rule 64 states that "[a]ny application for approval of a plan of reorganization under section 11, or otherwise, shall be deemed to include all applications and declarations under the Act which would otherwise be required as to any action necessary to consummate such plan." The Plan contemplates the cancellation of existing equity securities currently held by EUA under section 12(c) and the sale of utility assets by EUA to the bondholders under section 12(d). The Committee requests that the Commission address these transactions under rule 64 notwithstanding that EUA has not requested approval under sections 12(c) and 12(d).

[6] It is contemplated that a total of 12 million shares of common stock, at $0.01 par value, will be issued by reorganized EUA Power and that such securities, when issued, will be fully paid and non-assessable. Reorganized EUA Power will use its good faith efforts to have the new securities listed for trading on a national stock exchange.

[7] As a condition to participation under the Plan a holder of the Note that desires to receive its proportionate share of the new securities must surrender such Note.

[8] In each instance, these equity percentages would be calculated prior to any dilution resulting from the issuance of any securities such as the warrants that may be issued as part of a financing facility ("Plan Facility") under the Plan.

[9] The Plan, by its terms, will not become effective until certain conditions are satisfied or waived. The Effective Date will not be later than August 26, 1993 unless further extended by the Committee.

[10] EUA Power is a party to certain federal income tax allocation agreements between EUA and its subsidiary companies pursuant to rule 45(c). The Committee states that it believes that EUA Power is entitled to receive certain tax benefit payments, although the amount cannot be determined presently, under the tax allocation agreements. However, three of EUA's subsidiaries have filed proofs of claim in the amount of $8,176,759 against EUA Power claiming that they overpaid EUA Power for tax benefits due to EUA Power for the years 1988 and 1989.

[11] The preference suit against EUA in the amount of approximately $38 million was filed on May 30, 1991, contending that one of the factors leading to EUA Power's bankruptcy was its preferential transfers to EUA. In addition, the Committee sought leave of the Bankruptcy Court to file an adversary complaint on behalf of EUA Power and its creditors against EUA and others for a variety of tort, contract and bankruptcy law claims. The proceeds of such claims, if successful and depending on when such proceeds are received, will be used to pay down the Plan Facility or the DIP Financing (defined hereinafter) or for distribution to the holders of the Class Three Claims, or for working capital of reorganized EUA Power.

[12] The Committee obtained a commitment letter ("Shearson Commitment") from Shearson Lehman Brothers Inc. ("Shearson") to provide the Plan Facility. However, at a hearing on July 21, 1992, the Bankruptcy Court declined to approve entry into the Shearson Commitment apart from the confirmation process so that it will not be possible to obtain a committed Plan Facility prior to the confirmation of the Plan. The Shearson Commitment expired on July 22, 1992. The Committee states that, in order to ensure impartial, arms-length negotiations, it established a special subcommittee to negotiate with Shearson because Shearson is a member of the Committee.

[13] This figure does not include the economic value of any warrants.

applicable law, including this Commission.

In the meantime, EUA Power will continue to be funded by two of the joint owners of Seabrook, namely Connecticut Light and Power Company (CL&P) and United Illuminating Company ("UI"). By order dated August 21, 1992 (HCAR No. 25609), the Commission authorized CL&P, UI and EUA Power to extend the borrowing period to February 28, 1994 and to increase the borrowing amount from $15 million to $22 million ("DIP Financing").

In addition, the Plan provides that, during the period between confirmation of the Plan and the Effective Date, EUA Power must employ agents designated by the Committee to act as (1) a marketing agent to maximize the value of reorganized EUA Power's assets, and (2) a managing agent to manage and maintain EUA Power's business, pursuant to written agreements to be approved by the Bankruptcy Court and any regulatory body with jurisdiction under applicable law, including this Commission.[14] On the Effective Date, all directors of EUA Power shall be deemed to have resigned without any further action on the part of any person and the Committee shall appoint the new board of directors of reorganized EUA Power.

Upon consummation of the Plan, any bondholder that receives 10% or more of the new securities would become a "holding company" within the meaning of section 2(a)(7). The application-declaration states that any such bondholder will file a separate application prior to the Effective Date for an order under section 3(a)(4) exempting such bondholder from all provisions of the Act, except section 9(a)(2). The Plan will not become effective if such exemption is not granted by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20964 Filed 8-27-92; 11:59 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 21, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48299.
Date filed: August 17, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/C 0077 dated August r, 1992 TC3 (except to/from UST) Revalidation Of Cargo Resolutions.
Proposed Effective Date: October 1, 1992.

Docket Number: 48302.
Date filed: August 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Mail Vote 589. Amend minimum cargo charges from China (except to/from US/UST). *Proposed Effective Date:* September 1, 1992.

Docket Number: 48303.
Date filed: August 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 588—Reso 015h. TC12 USA–UK Add-ons. *Proposed Effective Date:* October 1, 1992.

Docket Number: 48304.
Date filed: August 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: CAC/Reso/172 dated July 9, 1992. Mail Vote A083—Enlargement of area covered by Reso 805 (Europe). *Proposed Effective Date:* September 1, 1992.

Docket Number: 48309.
Date filed: August 21, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Mail Vote 591—Resolution 011. Mileages & Routes for Tariff Purposes. *Proposed Effective Date:* November 1, 1992.

Docket Number: 48310.
Date filed: August 21, 1992.
Parties: Members of the International Air Transport Association.
Subject: Resolution 033F. Cargo Rates/Charges From Lebanon. *Proposed Effective Date:* October 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-20836 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 21, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48301.
Date filed: August 18, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 15, 1992.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 389 so as to change segment (4), which was added by Order 90–12–12, December 6, 1990, to read as follows: "From a point or points in the United States, via intermediate points, to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador, Brazil, and beyond Brazil to Argentina, Uruguay, Paraguay, and Chile."

Docket Number: 48305.
Date filed: August 19, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 16, 1992.
Description: Application of United Air Lines, Inc., pursuant to section 401 and subpart Q of the Regulations applies for a certificate of public convenience and necessity to authorize service between a point or points in the United States and a point or points in South Africa, via Cape Verde or other intermediate points.

Docket Number: 48307.
Date filed: August 20, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 17, 1992.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide foreign air transportation between the United States and Venezuela.

Docket Number: 48311.
Date filed: August 21, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1992.
Description: Application of Bahamasair Holdings Limited, pursuant to sections 402 of the Act and subpart Q of the Regulations, for renewal of the

[14] Such services are currently performed by EUA Service Corp., an affiliate of EUA Power, pursuant to a written service agreement which may be terminated by either party on thirty days notice.

foreign air carrier permit which authorizes Bahamasair to engage in the foreign air transportation of mail, passengers, and property between any point in the Commonwealth of The Bahamas and coterminal points Miami, Orlando, Palm Beach, Fort Lauderdale, and Tampa. Bahamasair also seeks amendment of its current permit by the deletion of the coterminal points Atlanta, Chicago, Detroit, Houston, Dallas, Newark, New Orleans, Memphis, Nashville and Charlotte.

Docket Number: 48312.
Date filed: August 12, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1992.
Description: Application of United Air Lines Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal and amendment of its Experimental Certificate of Public Convenience and Necessity for Route 246 authorizing service between the U.S. and the People's Republic of China (P.R.C.). United requests amendment of that certificate to include additional U.S. and P.R.C. gateways on its route pursuant to the recent amendments to the bilateral agreement.

Docket Number: 48314.
Date filed: August 21, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1992.
Description: Application of Balkan Bulgarian Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail as follows: From a point or points in Bulgaria to New York, New York, United States of America.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-20837 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 92-6-29, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1992, we have projected non-fuel costs based on the year ended March 31, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-8-39 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.3101
Western Hemisphere	1.2045
Pacific	1.6420

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: August 24, 1992.

Patrick V. Murphy,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20834 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 92-6-4 established the currently effective two-month SFFL applicable through July 31, 1992.

In establishing the SFFL for the two-month period beginning August 1, 1992, we have projected non-fuel costs based on the year ended March 31, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-8-40 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.5668
Latin America	1.4394
Pacific	2.1020
Canada	1.4271

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: August 24, 1992.

Patrick V. Murphy,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20832 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

[Order 92-8-43; Docket 48232]

Proposed Issuance of a Certificate Authorizing Bellair, Inc., to Engage in Limited Interstate and Overseas Air Transportation for a Term of One Year

AGENCY: Department of Transportation.
ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Bellair, Inc., fit, willing, and able to engage in limited interstate and overseas air transportation of persons, property, and mail for a term of one year and award it a certificate of public convenience and necessity to do so.

DATES: Persons wishing to file objections should do so no later than September 3, 1992.

ADDRESSES: Objections and answers should be filed in Docket 48232 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served on all parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: August 24, 1992.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20833 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

[Notice 92-12]

Aircraft Accessibility Federal Advisory Committee

AGENCY: Department of Transportation (DOT), Office of the Secretary.
ACTION: Notice; Scheduled of committee meeting.

SUMMARY: The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92-463), of the time and location

of the second meeting of the Aircraft Accessibility Federal Advisory Committee.

DATES: The second meeting of this Committee is scheduled for Wednesday, September 16, and Thursday, September 17, 1992, in Conference Room 10234 of the Department of Transportation (Nassif Building), 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Ebersole, Senior Program Analyst, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366–4864; or Ira Laster, Jr., Executive Director, Aircraft Accessibility Federal Advisory Committee, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366–4859.

I. Supplementary Information

The purpose of the Aircraft Accessibility Federal Advisory Committee is to advise the Secretary of Transportation on issues necessary for further rulemaking to implement the Air Carrier Access Act of 1986. The Committee will advise the Department on matters such as:

1. The degree to which it is possible to design for placement in a narrow-body aircraft a toilet that will accommodate persons with disabilities, including those who use wheelchairs;

2. For the various cabin configurations of different aircraft types under 200 seats, what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?

3. What physical layouts are possible which would provide disabled passengers using an on-board chair full maneuvering room inside the lavatory? What layouts would provide partial accessibility (e.g., a privacy area curtain outside the lavatory)?

4. Which designs can be accomplished without the loss of revenue seats? Which designs can be accomplished with only a minimal loss of revenue seats?

5. How would such arrangements affect passenger traffic within the cabin, flight attendant duties in galleys, and the passenger ease of access to the remaining lavatories?

6. How might such arrangements impair safety, if at all?

7. In small planes, where can the on-board chairs be stored?

8. Down to what size airplanes and for what types can accessible lavatory requirements reasonably be imposed?

9. Should any requirements for accessible lavatories be made a function of stage length (i.e., range of distances the aircraft usually covers during a flight segment) instead of airplane size, and, if so, for what stage lengths should such requirements be imposed? How would this approach alter air carriers' operational flexibility?

II. Background

Concurrent with the March 1990 publication of DOT's Air Carrier Access Act rule, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on specifications for accessible lavatories in narrow-body aircraft. The ANPRM stated that if sufficient information was not received, the Department would bring together aircraft manufacturers, disabled consumers, air carriers, and flight duty personnel to exchange information from which to frame a regulatory requirement.

Comments to the Docket in response to the 1990 ANPRM revealed little agreement among commenters concerning the degree of accessibility that can be achieved in lavatories on narrow-body aircraft. This is a complex, controversial question best answered through structured dialogue between aircraft manufacturers, air carriers, consumers with disabilities, and flight duty personnel.

The Department will use advice provided by the Committee to develop a notice of proposed rulemaking and a final rule.

Issued on August 24, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–20835 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 21–SQA; Quality Assurance of Software Used in Aircraft or Related Products

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–SQA, Quality Assurance of Software Used in Aircraft or Related Products. The proposed AC 21–SQA, provides information and guidance concerning the production of software used in type certificated aircraft or related products (airborne software). This AC is an acceptable means, but not the only means of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–SQA, File Number PO–220–0011, and be received by October 30, 1992.

ADDRESSES: Copies of the proposed AC 21–SQA can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Kim L. Wolfley, Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7146.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–SQA provides information and guidance concerning the production of software used in type certificated aircraft or related products (airborne software).

Comments Invited

Interested persons are invited to comment on the proposed AC 21–SQA listed in this notice by submitting such written data, views, or arguments as they desire to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–SQA may be examined, before and after the comment closing date in room 333, Federal Aviation Administration Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on August 26, 1992.

Dana D. Lakeman,

Assistant Manager, Aircraft Manufacturing Division.

[FR Doc. 92–20869 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program for Ryan Airfield, Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Tucson Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 4, 1992, the Assistant Administrator for Airports approved the Noise Compatibility Program for Ryan Airfield. Three (3) of the eight (8) recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Ryan Airfield noise compatibility program is August 4, 1992.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP–611.2, Western-Pacific Region, Federal Aviation Administration, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/297–1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Ryan Airfield, effective August 4, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an the FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The Tucson Airport Authority submitted to the FAA on November 22, 1989, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from September 1988 through August 1990. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on April 5, 1990. Notice of this determination was published in the **Federal Register** on May 1, 1990.

The study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1994. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on April 9, 1992 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eight (8) proposed actions for noise abatement and mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 4, 1992.

Outright approval was granted for three (3) Continuing Program Measures: Noise Compatibility Plan review and evaluation; Noise Control Updating; and Complaint Response. Four (4) Land Use Management measures were disapproved for the purposes of part 150: Pima County to maintain existing zoning designations consistent with Black Wash Drainage Analysis; Pima County to Adopt the recommendations of the Black Wash Drainage Analysis; Pima County to Amend Airport Environs Zoning; and Pima County to Amend the Southwest Area plan to reflect the Noise Compatibility Program and Airport Master Plan. One (1) Noise Abatement Measure was disapproved for the purposes of part 150 pending submission of additional information: Continue existing Preferential Runway Use Program.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 4, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Tucson Airport Authority.

Issued in Hawthorne, California on August 18, 1992.

Ellsworth L. Chan,

Acting Manager, Airports Division, AWP-600 Western-Pacific Region.

[FR Doc. 92-20868 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program for Tucson International Airport, Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Tucson Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 7, 1992, the Assistant Administrator for Airports approved the Noise Compatibility Program for Tucson International Airport. All of the recommendations of the program involving land use were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tucson International Airport noise compatibility program is August 7, 1992.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP-611.2, Western-Pacific Region, Federal Aviation Administration, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, Telephone: 310/297-1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Tucson International Airport, effective August 7, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The Tucson Airport Authority submitted to the FAA on February 6, 1990, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from September 1988 through April 1991. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on May 11, 1990. Notice of this determination was published in the **Federal Register** on May 22, 1990.

The study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1992. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on April 11, 1992 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 18 proposed actions for noise abatement and mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 7, 1992.

Outright approval was granted for all six (6) Noise Abatement Measures: Informal nighttime preferential runway use policy, aircraft engine runup restriction, development of an agreement with the Arizona Air National Guard for limiting aircraft operations and use of after-burners, encouragement of the use of Stage 3 aircraft at the airport, maintaining airport noise abatement staff and the formation of an advisory committee to assist the Airport Authority in the implementation of the NCP. Outright approval of all 12 Noise Mitigation Measures was also granted: Acquisition and redevelopment of mobile home sites within aircraft noise exposure of DNL 70+; Develop Phase I of a single-family residential sound insulation program; Establish and conduct a single-family

residential sales assistance program; Purchase avigation easements for on noise-sensitive uses that are not suitable for sound insulation, or for which the property owner does not wish to participate in other remedial programs; Acquisition of undeveloped land southeast of the airport within DNL 65+; Work with the City of Tucson and San Xavier District to adopt land use plans related to aircraft noise exposure; Request Pima County inform the Airport Authority of plans to develop property within the 65 DNL contour southeast of the airport and request the State of Arizona notify the Airport Authority of plans to sell trust lands in this area; Work with the City of Tucson and Pima County to update city and county noise control/land use overlay maps; Work with the City of Tucson and Pima County to require dedication of avigation easements for all construction within DNL 65+ noise contour; Work with the City of Tucson to adopt a fair disclosure ordinance; Meet with Federal Housing Administration and Veterans Administration to ensure national standards and policies concerning noise exposure are being followed.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 7, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Tucson Airport Authority.

Issued in Hawthorne, California on August 14, 1992.

Herman C. Bliss,

Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 92-20867 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-13-M

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 16, 1992, at 9 a.m.

ADDRESSES: The meeting will be held in the Department of Transportation, Nassif Building, room 3200–3202, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on September 16, 1992, at Department of Transportation, Nassif Building, room 3200–3202, 400 7th Street, SW., Washington, DC. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Wet Leasing Working Group, Autopilot Engagement Requirements Working Group, Flight Crewmember Flight/Duty/Rest Requirements Working Group, and Controlled Rest on the Flight Deck Working Group. Each Working Group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington,DC, on August 24, 1992.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-20863 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974; New System of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of a proposed new Privacy Act system of records.

SUMMARY: The Bureau of Engraving and Printing (BEP) proposed to add one new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). The Automated Mutilated Currency Tracking System is being established to: (1) Maintain information on mutilated currency claims; (2) follow-up cases that have been submitted for reimbursement; and (3) keep track of both the amount and recipient of individual payments.

DATES: Comments must be received no later than September 30, 1992. The new system of records will be effective October 30, 1992, unless BEP receives comments on the new system of records which would result in a contrary determination.

ADDRESSES: Please submit comments to the Disclosure Officer, Bureau of Engraving and Printing, Room 321–12A, 14th and C Streets, SW, Washington, DC 20228

FOR FURTHER INFORMATION CONTACT: Lawrence F. Zenker, Disclosure Officer, Bureau of Engraving and Printing, Room 321–12A, 14th and C Streets, SW, Washington, DC 20228, Phone: (202) 874–2687.

SUPPLEMENTARY INFORMATION: The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations in the House of Representatives, the Committee on Governmental Affairs in the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of appendix I to OMB Circular A–130, "Federal Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, dated December 24, 1985).

Treasury/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking Systems—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions sending in mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amount of claim, amount paid, types of currency, and condition of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of the Automated

Mutilated Currency Tracking System is to maintain historical information and to respond to claimants' inquiries, e.g., non-receipt of reimbursement, status of case, etc.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records consist of paper records maintained in file folders and records in electronic media.

RETRIEVABILITY:

By claimant name, case number, address or registered mail number.

SAFEGUARDS:

Access is limited to those specific employees who process the mutilated currency cases, prepare payment, research inquiries or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Active claimant files are maintained for two years. Inactive files are maintained for seven years. After the seven years, the files are purged from the system and then destroyed. (Inactive files are those for which final payments have been made.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Currency Standards, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 344A, Washington, DC. 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions and BEP employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: August 21, 1992.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 92-20876 Filed 8-28-92; 8:45 am]

BILLING CODE 4840-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Masterworks From the Musee Des Beaux-Arts, Lille," (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about October 27, 1992, to on or about January 17, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 25, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-20846 Filed 8-28-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 16, 1992, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: August 25, 1992.

M.J. Brodie,

Executive Director.

[FR Doc. 92-20956 Filed 8-27-92; 10:29 am]

BILLING CODE 7630-01-M

Corrections

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletions

Correction

In notice document 92–20064 beginning on page 37957 in the issue of Friday, August 21, 1992, make the following correction on page 37957, in the **COMMENTS MUST BE RECEIVED ON OR BEFORE:**, "December 21, 1992" should read "September 21, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

Correction

In notice document 92–19120 appearing on page 36073 in the issue of Wednesday, August 12, 1992, under **SUPPLEMENTARY INFORMATION**, the list of names following "James A. Rhoads, Chief, Civilian Personnel Division", should appear as set forth below.

Michael F. Slawson, Director, Center for Agency Services.

George J. Hoffman, Comptroller.

Benham E. Morriss, Deputy Manager, National Communications System.

E. William Harding, Director, Joint Data Systems Support Center.

David T. Signori, Jr., Associate Director.

John Hedrick, Director, Tactical Command, Control and Communications Agency.

Dennis W. Groh, Deputy Director, Acquisition Management.

Denis Brown, Director, Center for Information Management.

Clyde Jeffcoat, Director, Defense Information Technology Services Organization.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

[RIN 1010–AB81]

Oil Spill Prevention and Response for Offshore Facilities Including State Submerged Lands and Pipelines

Correction

In proposed rule document 92–19153 beginning on page 36032 in the issue of Wednesday, August 12, 1992, make the following correction:

On page 36032, in the third column, in the second full paragraph, in the second line "blesses" should read "lessees".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AE20

Revision of Fee Schedules; 100% Fee Recovery, FY 1992

Correction

In rule document 92–17027 beginning on page 32691 in the issue of Thursday, July 23, 1992, make the following corrections:

1. On page 32694, in the third column, in the first full paragraph, in the sixth line, "1UF_6" should read "UF_6".

2. On page 32701, in Table IV, remove the "Note:" appearing between footnotes 1 and 2 and insert the following information at the end of Table IV.

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	$399.8 million [2]
LESS ESTIMATED PART 170 POWER REACTOR FEES	90.2 million
PART 171 BASE FEES FOR OPERATING POWER REACTORS	$309.6 million

3. On page 32703, in Table V, in the 3d column, in the 15th line, "2,810,D00" should read "2,810,000".

4. On page 32704, in Table VI, in the 2d and 3d columns, in the 11th line, "2,154" and "53.4" should appear in the 4th and 5th columns, respectively.

§ 171.16 [Corrected]

5. On page 32715, in § 171.16(d), in the table, in 3C, in the second line, "radiopharmaceuticals" was misspelled.#

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 8421]

RIN 1545–AP48

Gasoline Excise Tax

Correction

In rule document 92–16561 beginning on page 32424 in the issue of Wednesday, July 22, 1992, make the following corrections:

1. On page 32424, in the second column, under Background, in the second paragraph, in the fourth line, "(26 CFR part 38)" should read "(26 CFR part 48)".

2. On page 32425, in the third column, in the third line from the top of the page, "to by properly" should read "to be properly".

3. On page 32427, in the third column, under "The Final Regulations":

a. In the first paragraph, in the eighth line, "on the same" should read "on that same".

b. In the second paragraph, in the second line, "set forth" should read "sets forth".

4. On page 32428, in the first column, in the fourth full paragraph, in the next to last line, "provided" should read "provide".

§ 48.4081–4 [Corrected]

5. On page 32432, in the second column, under § 48.4081–4(b), in the third line, "*gasoline)*—" should read "*gasoline*—".

6. On page 32433, in the first column, under § 48.4081–4(e)(3), in the third line, "Blendstock" should read "Blendstocks".

§ 48.4081–5 [Corrected]

7. On page 32433, in the second column, under § 48.4081–5(a), in the first line, "set forth" should read "sets forth".

§ 48.4081–6 [Corrected]

8. On page 32434, in the 1st column, under § 48.4081–6(b)(2)(i), in the 13th line from the end, "blended" should read "blender".

9. On page 32435, in the third column, under § 48.4081–6(f)(4) *Example 2,* in the fifth line from the top of the page, "gasohol into the" should read "gasohol into a".

10. On the same page, in the same column, under § 48.4081–6(g)(1)(ii), in the second line, after "at the time", "the " should be deleted.

11. On page 32436, in the first column, under § 48.4081–6(g)(2)(iii), in the first line, "The" should have been capitalized.

BILLING CODE 1505–01–D

federal register

Monday
August 31, 1992

Part II

Department of Energy

Office of Conservation and Renewable Energy

Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Request for Public Comments and Announcement of Public Hearings; Notice

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-79-112-A]

Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Request for Public Comments and Announcement of Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of Draft Energy Conservation Interim Standards, Request for Public Comments, and Announcement of Public Hearings

SUMMARY: The Department of Energy today is publishing for public comment draft energy conservation interim voluntary performance standards for new non-Federal residential buildings pursuant to the Energy Conservation Standards for New Buildings Act of 1976, as amended. 42 U.S.C. 6831–6840, *et seq.* The draft interim standards published today have been prepared for the voluntary adoption by non-Federal standard and code entities and Federal agencies which provide Federally-subsidized loans and loan guarantees to home buyers to use in establishing energy conservation buildings standards and codes for new non-Federal residential buildings including single-family, multi-family low-rise, and manufactured (mobile homes) housing. The draft interim standards also provide building standard and code jurisdictions with a recommended methodology for establishing energy consumption goals for the design of new non-Federal residential buildings in locations throughout the United States. The methodology uses a computerized calculation procedure provided in a micro-computer program called Automated Residential Energy Standards (ARES). The draft interim standards also provide certain recommended procedures for users, such as State and local building code jurisdictions and Federal agencies, to impose on applicants. These procedures would require demonstration in any one of three ways that the design of a new non-Federal residential building is as energy-conserving as the energy consumption goal established for the design.

Today's draft interim standards are presented in a format commonly used by the private sector standards-setting organizations instead of that used for a Federal regulation. This format will facilitate acceptance by the private sector.

DATES: Written comments (8 copies) on the proposed interim rule must be received by the Department by November 30, 1992.

Public hearings will be held in Atlanta, Georgia on October 19, 1992 at 1 p.m.; San Francisco, California on October 21, 1992 at 9:30 a.m.; Chicago, Illinois on October 23, 1992 at 9:30 a.m.; and Washington, DC on October 27, 1992 at 9:30 a.m.

Requests to speak at the public hearings in Georgia, California, and Illinois must be received by October 9, 1992. Requests to speak at the Washington, DC hearing must be received by October 26, 1992.

ADDRESSES: All written comments (8 copies), requests to speak at the public Hearings, and requests for the supporting documentation are to be submitted to:

U.S. Department of Energy, CE–90, room 6B–025, Hearings & Dockets, Docket Number CAS–RM–79–112–A, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8757.

The public hearings will be will be held at the following locations:

Tishman Building, 525 Market Street (at 1st Street), Sierra Room, 30th Floor, San Francisco, California.

Insurance Exchange Building, 175 West Jackson (at Wells), room 1658, 16th Floor, Chicago, Illinois.

Peachtree Summit Building, 410 West Peachtree Street (at Ralph McGill Street), Conference Room B, 10th Floor, Atlanta, Georgia.

U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 1E–245 (1st Floor, E Corridor), Washington, DC.

Copies of the computer program, technical support documents, other supporting documentation, transcripts of the public hearings, individual oral statements, and the written public comments received may be viewed at the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020, 9 a.m. – 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Turchen or Stephen P. Walder, U.S. Department of Energy, Office of Conservation and Renewable Energy, CE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6262 or 586–0517.

Neal J. Strauss, Esq., or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction
- A. Legislative Requirements and History
- B. Background

II. The Research and Development of the Draft Interim Standards
- A. Equivalency Among Energy Types
- B. Mandatory and Minimum Requirements
- C. Domestic Hot Water
- D. Building Types
- E. Energy Analysis Tool for Development of the Draft Standards
- F. Energy Data Base
- G. Adjustment of Energy Data for Specific Locations
- H. Thermal Mass
- I. Infiltration
- J. Windows
- K. Foundations
- L. Heat Pump Performance by Location
- M. Equipment Oversizing
- N. Duct Insulation
- O. Cost-Effectiveness of Energy Conservation Measures
- P. Cost Data Base
- Q. Solar Space Conditioning Alternatives
- R. Shading Devices
- S. Micro-Computer Program to Embody the Methodology for Developing the Proposed Standards
- T. Automated Residential Energy Standards (ARES) Micro-Computer Program
- U. Compliance
- V. Comparison of the DOE Draft Interim Voluntary Standards with Model Energy Codes
- W. Use of the Standard Recommendations by Others
- X. Updating of the Standards for New Technology

III. Description of the Draft Interim Standards
- A. Summary of the Draft Interim Standards
- B. Section By Section Description of the Draft Interim Standards
  1. Section 1.0: Purpose
  2. Section 2.0: Scope
  3. Section 3.0: General Definitions and Acronyms
  4. Section 4.0: Developing the Criteria and Demonstrating Compliance
  5. Section 5.0: Minimum Design Requirements
  6. Section 6.0: Prescriptive Compliance Path
  7. Section 7.0: Points Compliance Path
  8. Section 8.0: Performance Compliance Path
  9. Appendix A: Explanation of the Automated Residential Energy Standards (ARES) Computer Program
  10. Appendix B: DOE Input on Economic Parameters for ARES
  11. Appendix C: Radon Control Measures
  12. Appendix D: Points Compliance Forms

IV. Procedural Requirements
- A. National Environmental Policy Act
- B. Executive Order No. 12291
- C. Regulatory Flexibility Act
- D. Paperwork Reduction Act
- E. Executive Order 12612
- F. Section 32 Findings

V. Public Comment Procedures
- A. Public Participation

B. Written Comment Procedures
C. Public Hearings
1. Procedure for Submitting Requests to Speak
2. Conduct of Hearings.

I. Introduction

A. Legislative Requirements and History

The Energy Conservation Standards for New Buildings Act of 1976, as amended (Act), 42 U.S.C. 6831 *et seq*, requires the Department of Energy (Department or DOE) to issue "voluntary performance standards" for the design of new commercial and residential buildings. A Federal agency is required to comply with the standards for the design of any new "Federal building." 42 U.S.C. 6835. For non-Federal buildings, compliance is voluntary; the standards serve only as voluntary guidelines intended for adoption as part of existing building code and other construction control mechanisms. A "Federal building" is any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. 42 U.S.C. 6832(6). "Federal agency" is defined to include any Executive agency and the United States Postal Service. 42 U.S.C. 6832(5).

As originally enacted, the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement, and enforce compliance with the performance standards. On August 4, 1977, the Act was amended by Section 304(a) of the Department of Energy Organization Act, Public Law 95–91, which transferred from HUD to DOE the responsibility to develop and promulgate the standards.

On November 28, 1979, DOE published proposed performance standards for new buildings in the **Federal Register**, 44 FR 68120 (hereafter referred to as the November 1979 proposal). The notice was controversial and generated extensive comments.

Less than a year after DOE published the November 1979 proposal, the Act was again amended by Section 326 of the Housing and Community Development Act of 1980, Public Law 96–399. This amendment requires that DOE first promulgate interim standards and then final standards. Additionally, the statute requires DOE to conduct demonstration projects in at least two geographical areas of the country and to report to Congress on the results. 42 U.S.C. 6833(a)(2). The demonstration projects are for the purpose of evaluating the interim standards and are to be completed prior to preparation and adoption of the final standards.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, amended the Act by: Establishing the term "voluntary performance standards"; eliminating the provision for a possible statutory sanction for non-compliance; and adding a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings." 42 U.S.C. 6833(a)(4). The term "voluntary performance standards" was defined to mean "an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary." 42 U.S.C. 6832(9).

The legislative changes enacted since 1976 required DOE to make fundamental changes to the compliance aspects of the standard regulatory approach which Congress had earlier directed the Department to take. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. 42 U.S.C. 6831(b)(2). The Department has already published some of the required interim standards.

Mandatory interim energy conservation performance standards for new Federal residential buildings were published on August 25, 1988, at 53 FR 32536, and energy conservation interim voluntary performance standards for new commercial and multi-family high rise buildings were published on January 30, 1989, at 54 FR 4538. Amendments to the Federal residential standards were published on January 31, 1991, at 56 FR 3764.

B. Background

The public comments received in response to publication of DOE's November 1979 proposal demonstrated the need for DOE to revise the scope of the development of energy conservation standards.

The present program, of which the non-Federal residential standard is a part, began with FY 1982 funding and is a redirection of the original effort which created proposed "Building Energy Performance Standards" (BEPS). The original program was directed towards a mandatory national standard for all new buildings in the form of whole building energy budgets expressed in terms of Btu per square foot per year by building type and climate location. The activities since 1982 represent a new approach to the development of standards. The legislative changes, as well as the tenor and volume of comments on the proposed BEPS, convinced DOE that "voluntary standards" would have to be developed within the confines of traditional building industry practice and in simple enough terms to be useable. In addition, it became apparent that if standards were to be adopted by States and local governments, the building industry and code officials needed to be involved from the very beginning.

The current program represents an incremental approach to standards development. First, credible building research and industry-recognized energy analysis tools have been used in the development of the standards so that the basis for the standards is sound. Second, architects, engineers, builders, and code officials have been involved in the process, and they continue to work with the Department on specific issues. Third, the present work does not redo the large amount of underlying research that went into the original program; rather, it uses that information, builds on it, and packages it in a useable form.

The strategy in developing design energy conservation performance standards was to identify the most widely accepted and broadly based standard and build upon it in the development of the DOE standards which meet the legislative requirements set forth in the Act. Standards 90–75 and 90A–180 of the American National Standards Institute (ANSI)/American Society of Heating Refrigeration and Air-Conditioning Engineers (ASHRAE)/ Illuminating Engineering Society of North America (IES) best fit these criteria (see National Conference of States on Building Codes and Standards, Inc., January 1984, *Directory and Compilation of Technical and Administrative Requirements in Energy Codes for New Building Construction Used Within the United States*, page V).

The strategy involved a request for competitive proposals for interdisciplinary teams to work under contract in order to assist DOE in the development of standards. DOE gave direction to the development of the draft standards while taking advantage of the experience and insights of the contracted team.

ASHRAE submitted the successful response to a request for proposal on the Voluntary Non-Federal Residential Standards. ASHRAE undertook the work and designated a committee known as Special Project 53 (SP–53) to

fulfill its contract. A Technical Evaluation Committee (TEC) of eight professionals was created by SP–53 which included architects, engineers, manufacturers, and builders.

To ensure that the needs and concerns of building code officials were incorporated into the development of the standards, DOE entered into a contract with the National Conference of States on Building Codes and Standards (NCSBCS) which brought into the process first-hand knowledge of building codes across the United States. NCSBCS's experience covers the range of technical, political, social, and legal issues that surround the implementation of building codes.

In addition to providing immediate feedback and comments during the development of the standards, NCSBCS assembled and maintained informal communication with officials selected from various State, county, and local code jurisdictions. These State officials periodically commented on the work and progress of the standards, provided recommendations for modifications or improvements, and "alpha tested" (operated in a simulated user environment) the recommended software.

DOE consulted with the National Institute of Standards and Technology (NIST) in developing requirements for the voluntary standards. NIST assembled technical input and background data relevant to the standards. This information was considered along with all other data sources in the development of the proposed standards.

In July 1988 the ASHRAE TEC submitted its contracted project recommendations to DOE in the form of four documents designed to provide the technical foundation for the energy standards for new non-Federal residential buildings. These documents were developed over a two-year period by the TEC, under the management of the Department of Energy.

DOE employed its Pacific Northwest Laboratory (PNL) to review the ASHRAE TEC output and perform related research. PNL also published the ASHRAE TEC documents which include:

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 1: Text of the Standards*, Richland, Washington, PNL–6878, Volume 1, UC–95d. (This document contains the text of the recommendations for the residential energy standard. The text contains a microcomputer program used in developing the standards requirements.)

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 2: Automated Residential Energy Standard-User's Guide-Version 1.1*, Richland, Washington, PNL–6878, Volume 2, UC–95d. (This document provides a description of how to use the computer program, recommends methods for obtaining and deriving input data, and provides guidance on the interpretation of the output.)

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 3: Introduction and Background to the Standard Development Effort*, Richland, Washington, PNL–6878, Volume 3, UC–95d. (This document describes how the recommendations were developed and contains the rationale for the general approach and specific criteria contained within the recommendations.)

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 4: Description of the Testing Process*, Richland, Washington, PNL–6878, Volume 4, UC–95d. (This document details how the recommended standards were tested and provides case studies of the possible impact of the standards in selected locations throughout the country. It is supported by a description of the assumptions and input data and an analysis of the results.)

II. The Research and Development of the Draft Interim Standards

The research underlying today's notice was guided by three general principles. First, it was understood that the substantial improvements in energy technology, analysis tools, and the understanding of building energy consumption characteristics offered an opportunity for greatly improving the existing consensus on energy conservation standards. Second, the importance of the cost of energy conservation had to be considered in newer standards because cost effectiveness would be an important consideration for standard and code officials when adopting new standards. Third, there was a great need for flexibility and ease of use by code officials and builders. The research described below reflects these factors and provides the foundation for draft interim standards that are inclusive of new technology and up-to-date design and construction procedures and are cost effective to the new home buyer.

The following is a list of the major objectives of the standard development process.

1. The draft interim standards should provide for multiple compliance paths. With multiple paths, the end user selects from compliance methods that range from a simple, relatively inflexible (highly prescriptive) method to one providing a significant degree of design latitude but requiring a more sophisticated analysis (highly performance oriented).

2. The requirements of the draft interim standards should be dictated by economics, as well as energy. That is, the requirements of the interim standards should be cost-effective for any level of energy conservation and for each location.

3. The draft interim standards should be established using the best energy use analysis procedures available. The energy analysis procedure selected to support standards development should be based on its ability to accurately model residential energy use patterns and the range of building design conditions that it can simulate.

4. The compliance procedures of the draft interim standards should be as simple and concise as possible to make codification easy and expedite design reviews by code officials. Complex standards will not be readily accepted by code agencies and end users. Therefore, DOE took into consideration several aspects of the codes and standards process when outlining the draft interim standards. They include the following:

The *implementation* process (the process a code agency must go through to convert standards to codes);

The *compliance* process (the process end users follow to demonstrate compliance with the code); and

The *enforcement* process (the process the local code agency follows in checking for compliance).

5. The draft interim standards should encourage a wide range of energy conservation measures. For example, energy measures such as innovative glazing should be encouraged by making explicit the procedures for receiving credits for the use of such a measure.

6. The draft interim standards should be comprehensive in coverage. To the extent practicable, the draft interim standards should be designed to equitably address the wide range of common residential unit types, such as site-built single-family and multi-family low-rise homes and manufactured

housing (mobile homes); common construction materials, including light frame and heavy mass materials; and the major foundation types such as basements, crawlspaces, and slabs-on-grade.

7. The draft interim standards must be localized, as opposed to national, where appropriate and capable of utilizing local data in forming compliance requirements. The energy analyses and data incorporated in the draft interim standards should be derived from the substantive residential research results that preceded development. However, the compliance requirements of the draft interim standards should be determined using appropriate local data (typically energy and energy conservation measure cost data) provided by the codifying agency. The other information necessary to establish the compliance requirements, and the procedures to demonstrate compliance, should be contained in the interim standards.

8. The draft interim standards should accommodate new technologies. The draft interim standards should be designed to allow modification as new methods of saving energy become economical. Updating the draft interim standards should not require extensive modification of the compliance procedures. Rather, the draft interim standards should contain provisions to reference new materials and methods, as they become available.

9. The draft interim standards should contain equipment sizing requirements. Such a capability should be provided in recognition of the important role equipment sizing plays in end use energy consumption. Particular attention should be given to the regional performance of heat pumps.

In formulating the methodology for the recommendations, the following associated issues were taken into account:

- The current status and anticipated developments in building materials and equipment technology and construction practice;
- The current and projected capabilities of design practice, taking into account the availability of new design and analysis tools;
- The approach and format utilized by other existing or proposed national, State, and local energy standards;
- The significance of indoor air quality issues and the nature of indoor air pollutants;
- Opportunities to encourage the use of renewable energy sources, including, but not limited to, daylighting, solar, and geothermal systems and subsystems;
- The problems of enforcement by building code officials;
- The ability to encompass a wide range of residential unit types and construction materials; and
- The incorporation of examples of the standard's application.

The draft interim standards cover new residential buildings including single-family, multi-family low-rise, and manufactured housing (mobile homes). The influences on energy use of the design of the building envelope, mechanical systems, and the domestic hot water system were considered. Regional climate effects were included, as were regional variations that dictate cost-effectiveness such as local energy costs. Providing for regional equity was an important consideration. That is, the draft interim standards should not penalize one or more portions of the country because of climate, custom or economic singularity.

DOE used the ASHRAE SP–53 product as the basis for the development of today's draft interim standards. DOE has revised some of the assumptions (details discussed below) that were recommended by the ASHRAE Committee to conform more closely to governing statutory requirements and to reflect subsequent research results. The Department also conducted an economic analysis and an environmental assessment. Further analyses were performed to provide additional documentation and technical information to the public during the upcoming comment period.

The draft interim standards are documented in seven publications for new non-Federal residential buildings. They are:

U.S. Department of Energy, September 1989, *ARES 1.2–User's Guide (Automated Residential Energy Standard), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, (ARES 1.2–User's Guide)*, Washington, DC, DOE/CE–0274, Volume 1 of 7. ARES 1.2–User's Guide explains the use of the ARES program to develop location-specific energy conservation requirements.

U.S. Department of Energy, September 1989, *Technical Support Documentation for the Automated Residential Energy Standard (ARES), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Technical Support Document (ARES)]*, Washington, DC, DOE/CE–0274, Volume 2 of 7. The technical support document explains the data and algorithms used by the ARES program to optimize energy-related features of new residences.

U.S. Department of Energy, September 1989, *Background of the Development Process (of) Automated Residential Energy Standard (ARES), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Background of Development Process (ARES)]*, Washington, DC, DOE/CE–0274, Volume 3 of 7. This document explains the background and philosophy of the ARES program and the standards developmentprocess.

U.S. Department of Energy, September 1989, *Technical Support Documentation for the Automated Residential Energy Standard (ARES) Data Base, In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Technical Support Document (ARES) Data Base]*, Washington, DC, DOE/CE–0274, Volume 4 of 7. This publication documents the assumptions and procedures used to develop the residential energy consumption data base in ARES.

U.S. Department of Energy, September 1989, *Description of the Testing Process for the Automated Residential Energy Standard (ARES), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Testing Process for (ARES)]*, Washington, DC, DOE/CE–0274, Volume 5 of 7. This document describes the process used to initially test the ARES computer program.

U.S. Department of Energy, September 1989, *Economic Analysis, In Support of Proposed Interim Energy Conservation Voluntary performance Standards for New Non-Federal Residential Buildings, (Economic Analysis)*, Washington, DC, DOE/CE–0274, Volume 6 of 7. The economic analysis describes an assessment of the likely impacts of the new standards on the Nation's economy.

U.S. Department of Energy, September 1989, *Environmental Assessment, In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, (Environmental Assessment)*, Washington, DC, DOE/CE–0274, Volume 7 of 7. The environmental assessment describes an assessment of the likely impacts of

the new standards on new home habitability, on institutions associated with residential construction, and on the economy in general.

The Department is also providing the following ancillary support document for public comment:

U.S. Department of Energy, November, 1991, *ACRES 1.2—User's Guide (Automated Compliance for Residential Energy Standard), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings*, Washington, DC, DOE/CE–0345. This guide explains the installation and use of ACRES to demonstrate compliance with the proposed standards using the points compliance technique.

In developing today's draft interim standards, the Department and its consultants attempted to use well–documented and proven sources of data, methodologies, and other pertinent information. However, many assumptions and/or parameters that influence the effectiveness of energy conservation measures are subject to change with time or differ substantially among locations. In such cases, the Department relied on engineering and economic judgment to establish reasonable values for these parameters. The following is a discussion of the major assumptions that form the technical and economic basis for these draft interim standards.

A. Equivalency Among Energy Types

One of the first major decisions concerned the treatment of different energy types. With a stated objective that each fuel type be treated equally, no fuel type was given preferential treatment and all levels of energy conservation were to be set solely on the economic impacts of the specific energy conservation actions. Therefore, it was important that the draft standards not require a user to switch fuels to obtain compliance for a design that was not previously in compliance. Accordingly, DOE decided not to set one firm energy dollar goal based on the standard gas-heated, electrically-cooled house, but rather to create separate targets for different energy types. Five heating/cooling equipment-type combinations were used in the development process. They were:

- Gas Furnace, Electric Direct Expansion Cooling;
- Oil Furnace, Electric Direct Expansion Cooling;
- Liquified Petroleum Gas (LPG) Furnace, Electric Direct Expansion Cooling;
- Electric Resistance Heating, Electric Direct Expansion Cooling; and
- Heat Pump for Heating and Cooling.

Each of these combinations represents a different energy-type and equipment combination.[1] Therefore, if the energy type changes in the course of the design process, the user must return to the beginning of the compliance process and begin again with the requirements of the new equipment combination.

DOE considered several options with the objective of providing a performance measure against which the proposed designs will be compared. They were: 1) compliance based on maximum allowable annual site energy consumption, 2) compliance based on maximum allowable annual source energy consumption, and 3) compliance based on maximum allowable annual energy costs. The first option is problematic in that differences in conversion efficiencies between fuel types make direct comparisons of site energy inequitable. Electricity, for example, is often produced by burning natural gas at an overall efficiency of less than 40 percent. Natural gas can be burned directly to heat a home at a much higher overall efficiency. The second option achieves the desired objective, but is difficult to implement because of the difficulty in obtaining data on reasonable source-to-site conversion efficiencies, particularly where the source is hydroelectric or nuclear. The third option, which was selected for the development of the draft interim standards, provides the most equitable and meaningful reflection of actual source energy consumption and eliminates questions of conversion efficiencies. It also allows market forces to dictate consumers' fuel preferences.

B. Mandatory and Minimum Requirements

The majority of requirements in the draft interim standards are determined directly from the life-cycle cost optimization done by the ARES computer program employed by a user (such as a building code authority). However, the Department recognizes that some home features and construction specifications might be required for reasons other than cost effectiveness or for which cost effectiveness is difficult to assess accurately. These are discussed in Position Paper 1–2 (see *Background of Development Process*, pages A.8–10). Such features are generally intended to comply with regulatory requirements (such as the DOE appliance energy efficiency standards) and to prevent unreasonable construction in a particular climate area. An example of the latter would be a ban against a design with R–38 ceiling insulation and no wall insulation. Considerations such as occupant comfort, safety, and moisture protection and control make such a combination unreasonable in a particular climate area even though it might meet the standard on the basis of energy consumption savings.

Other energy conservation requirements are not covered by the life-cycle cost optimization. These requirements involve aspects of construction for which there is or should be no variability (e.g. installation procedures) or for which investment costs are insignificant. An example of the latter would be the requirement that all electrical and other penetrations through exterior walls be caulked and sealed.

The mandatory and minimum design requirements are set forth in Section 5.0 of the draft interim standards. The public is invited to comment on whether Section 5.0 should be modified by additions or deletions and whether Section 5.0 would withhold discretion designers ought to have in designing new residential buildings.

C. Domestic Hot Water

The Department considered several possibilities regarding the treatment of domestic hot water (DHW) in the draft interim standards, including: 1) eliminating DHW from the requirements entirely, 2) including DHW requirements separate from the space heating requirements, 3) allowing DHW options to be traded against heating, ventilating, and air-conditioning (HVAC) equipment options, and 4) allowing DHW options to be traded against the overall energy cost target, which would allow trade-offs between DHW and any other conservation features. DOE's decision to allow trade-offs between DHW and all other conservation features (option 4) is based on its belief that the minimum design requirements of Section 5.0 of the draft interim standards will prevent excessive trade-offs that would have deleterious effects on a home's long-term energy performance and generally would be unacceptable to building code officials in the United States. DOE invites comments on this decision.

The draft interim standards provide for the possible use of solar domestic water heaters. The analytical basis is set forth at *Background of Development Process*, pages A.170–A.214. DOE is

[1] DOE considered including a combination for solar heating and cooling, but in the absence of reliable test procedures for rating energy consumption, it is inappropriate to do so.

especially interested in public comment on the basis for the credit for using solar DHW systems. It may be desirable to postpone inclusion of solar domestic water heaters until such time as there are consensus test procedures for rating system energy performance.

D. Building Types

Understanding that different types and styles of residential housing may use energy differently, the Department examined a number of residential structure types in determining whether to provide unique standards for each type. Previous DOE research had identified nine separate categories of residential structures that formed the basis for examining this issue. The nine categories are:

- One Story Single-Family Detached Home;
- Two Story Single-Family Detached Home;
- Split Level Single-Family Detached Home;
- End-Unit Apartment;
- Mid-Unit Apartment;
- End-Unit Townhouse;
- Mid-Unit Townhouse;
- Single Wide Manufactured (Mobile) Home; and
- Double Wide Manufactured (Mobile) Home.

Requiring private-sector builders to accommodate to many different standards for different housing types in the same location was viewed as a serious deterrent to the adoption and use of the standards because of excessive complexity. (A multiplicity of housing prototypes would multiply the compliance documents). For example, in a row of multi-family attached housing, those units on the ends are expected to use energy differently from those in the middle because they have more wall area. However, allowing design requirements to differ between the two is not practical since the apartments or townhouses make up a single structure in reality.

Accordingly, a method was developed to condense the categories by identifying combinations of the different types that performed similarly and provided the same energy conservation measure levels based on economics. Generic designs, representing the nine categories, were modeled and energy analyses conducted; see *Background of Development Process*, Position Paper 2–2, pages A.21–A.54. The analyses were done for five different locations found in the U.S. The five cities were: Phoenix, Arizona; Atlanta, Georgia; Washington, DC, Denver, Colorado; and Minneapolis, Minnesota. The analyses examined the costs and energy benefits of various levels of envelope and equipment conservation features in each location and for each of the nine prototypes. "Breakpoints," or the highest levels of conservation benefits that are economically justified, were identified for each housing prototype in each location. Groups of housing types that consistently exhibited identical breakpoints were consolidated for the draft standards. The condensed categories which resulted from this analyses were:

- Single-Family Detached Homes (representative of the three detached styles);
- Multi-Family Low-Rise Attached Homes (representative of the four apartment and townhouse styles); and
- Manufactured (Mobile) Homes (representative of the two mobile home types).

E. Energy Analysis Tool for Development of the Draft Standards

To successfully implement a performance-based standard, an accurate means of calculating energy requirements was necessary. DOE examined a number of alternative methodologies and software packages from both public domain and private sources. The methodologies examined included standard and variable- base degree-day methods, temperature bin methods, daily average temperaturemodels, simplified transient models available on microcomputers, and complex hourly thermal models generally used on main-frame computers. The following criteria were considered in selecting an energy calculation method:

(1) The flexibility of the procedure—The procedure must accommodate analysis of a broad range of energy conservation measures.

(2) The relative and perceived accuracy of the procedure—The procedure must have been widely exercised by the research community and be generally accepted as generating reliable energy consumption estimates.

(3) The use of the procedure in other related activities—This criterion considers the advantage of using a tool that has been demonstrated as viable by other codifying agencies. If a procedure that meets all other requirements has been used in similar activities, it is beneficial to minimize end-user confusion by adopting it.

(4) Acceptance of the procedure by the engineering and scientific community as being current and credible—The procedure must be well-documented. The equations and algorithms of any software must be publicly available.

(5) Ability to use the tool within the time and effort constraints of the standard development process.

(6) Compatibility of the procedure's results with the energy data requirements of the draft interim standards and with the required economic and environmental assessments of the standards.

Following a thorough consideration of the available procedures, the Department determined that the DOE–2.1 computer program best fulfilled the requirements, particularly with respect to widespread acceptance and previous demonstration in related activities (see *Background of Development Process (ARES)*, pages A.13–20).

F. Energy Data Base

From its Lawrence Berkeley National Laboratory, the Department obtained a database for insertion in ARES of DOE–2.1 energy estimates for the range of energy conservation measures available to home builders. However, these original analyses used an older version of the DOE–2.1 program that did not adequately model all conservation measures contemplated for the draft interim standards. Also, in consultation with the ASHRAE TEC, DOE determined that the operating conditions assumed in the original computer simulations were not best suited for an analysis designed to establish public policy. Therefore, a new database of energy consumption estimates was developed using the latest available version of DOE–2.1 (version 2.1C) and assuming more appropriate occupancy use and thermostat schedules. This work is documented in *Technical Support Document (ARES) Data Base*.

The resulting energy data base contains energy use by component (energy conservation measure). For example, the energy use for walls with different insulation levels is given as a function of the thermal resistance of the wall. Energy use is given on a per unit basis for each component; in most cases, this is per square foot but for some, like perimeter foundation insulation, it is per linear foot. Energy savings were calculated for each component in each of 45 base cities identified for their comprehensive coverage of U.S. climates. The estimated energy consumption data were converted to an equation format for use in the ARES software.[2]

[2] Weather data for the DOE–2.1 analyses were obtained from *Weather Year for Energy*

Continued

G. Adjustment of Energy Data for Specific Locations

The primary energy consumption estimates used by ARES are contained in a database of DOE–2.1C simulation results from 45 geographically diverse locations in the United States (see *Technical Support Document (ARES) Data Base*). The 45 locations were selected to account for the major climatic and economic differences across the Nation. To accommodate other locations, two sets of location modifiers were developed. The first, documented in Position Paper 2–3 (see *Background of Development Process*, pages A.55 and 56), adjusts the basic heating and cooling loads from a selected base city to account for minor weather differences between the base city and another city with a similar climate. The second, documented in Position Paper 2–4 (see *Background of Development Process*, pages A.57–65), accounts for the climate-induced variation of heat pump efficiency from the manufacturer's rated heating season performance factor.

Basic climate multipliers are computed as simple ratios of degree days between the two cities in question. The heat pump multipliers are based on common temperature bin analyses. (A bin analysis utilizes a frequency distribution of local hourly outdoor temperature occurrences to weight energy consumption by a device with a temperature-dependent thermal efficiency.)

H. Thermal Mass

The presence of materials capable of storing and releasing significant quantities of heat ("thermal mass") impacts a building's heating and cooling energy performance. There are two primary varieties of thermal mass relevant to an energy performance standard: 1) thermal mass in exterior walls, and 2) "interior" thermal mass used to provide heat storage in passive solar designs.

A compliance scheme for determining the contribution of interior thermal mass to a building's thermal performance was deemed too complex for the simplified prescriptive and points compliance paths. Therefore, builders seeking compliance with these standards utilizing passive solar designs must use the performance compliance path. Designs incorporating strategic window placement without relying on increased interior mass are accommodated by the prescriptive and points alternatives.

With regard to thermal mass in exterior walls, DOE did not consider the energy benefits of increased thermal mass when identifying cost-effective wall construction requirements because a builder's decision to use masonry or other massive wall construction is based on aesthetic and other considerations besides energy efficiency. However, because there are energy benefits from wall mass, especially in locations with significant cooling loads, the draft interim standards would allow builders to take credit for wall mass in demonstrating compliance with the requirements of these draft interim standards.

I. Infiltration

In developing the infiltration control requirements set forth in these standards, DOE sought to limit air exchange rates without adversely affecting indoor air quality. A set of minimum requirements, representing simple and proven practices such as caulking and sealing of joints and selection of well-fitted windows, was first developed. The air exchange rates implied by these requirements was calculated using the Effective Leakage Area method described in the *ASHRAE Handbook, 1985 Fundamentals* (American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., Atlanta, GA). A second, optional, set of measures was developed that incorporates more stringent control measures, primarily an air infiltration barrier (house wrap). This optional, "tight" package of options is designed to allow trade-offs between infiltration control measures and other building components.

The tightest infiltration control measures prescribed by these standards are designed to maintain air exchange rates not below approximately 0.35 air changes per hour (actual rates vary by climate). This rate is consistent with average exchange rates measured in recent infiltration studies (see, for example, *Air Change Rate and Airtightness in Buildings, ASTM STP 1067*, American Society for Testing and Materials, 1990, Table 2, page 101). Reducing the exchange rate below this average level could potentially have adverse effects on air quality, depending on many other factors, unless mechanical ventilation is provided.

J. Windows

The analysis of windows included accounting for the conduction effects of different sash types and different numbers of layers of glazings. The solar gain effects were calculated based on the orientation, shading coefficient, and shading by overhangs.

The potential for solar gains to offset heating load depends upon the timing of the gain and the overall thermal conductance of the structure. In some cases, the heat coming through a window during the winter may result in over-heating but does not displace fuel that would be consumed otherwise. Thus, the additional solar gain has no utility in that climate, and credit is not given for 100 percent of the solar heat gain. All of these variables were combined through the use of regression analysis techniques to establish sets of equations for use in the ARES energy data base (see *Technical Support Document (ARES) Data Base*, pages 50–60, and *Background of Development Process*, Position Papers 5–1 and 5–2, pages A.138–A.145). These equations are used to calculate the energy use per square foot of window area for different orientations. A solar gain reduction factor is also provided to account for the effects of different overhangs on each orientation.

K. Foundations

Four prevalent foundation types are included in the draft interim standards: slab-on-grade, crawlspace, heated basement, and unheated basement. In identifying optimal combinations of energy conservation measures for buildings with different foundation types, the optimal conservation measures occasionally differ. For example, the optimal slab house may differ from the optimal crawlspace house in areas other than foundation insulation. However, DOE deems it impractical to promulgate requirements that differ by foundation type because of the complexity that would result and the problems that would be associated with bringing a house with more than one foundation type into compliance (e.g., a partial basement).

DOE constrained its optimization of house features such that conservation levels are identical regardless of foundation type. To identify cost-optimal conservation measures, a prototypical house is assumed to have the most prevalent foundation type for its location. Optimal insulation levels of other foundation types are then identified assuming all other features of the home are fixed.

Calculations (WYEC) Weather Year Data, where available. (WYEC data are on tapes available from ASHRAE, Atlanta, Georgia.) WYEC data were available for 39 of the 45 cities analyzed. *Typical Meteorological Year* (TMY) data were used for the other 6 cities. (TMY data are available from the National Climatic Data Center, Federal Building, Ashville, North Carolina, (704) 259–0682.)

Experience with the building-to-ground contact model in DOE–2.1C indicated that it was not accurate enough for the development of the draft interim standards. A finite element model had been developed to work with the earlier B version of the DOE 2.1 computer program, but its results had not been verified. A two-dimensional finite element model developed at the University of Minnesota was used for the standards. When the standards were being developed, this model was fairly new and had not been published. This model, run for the four foundation types in each of the 45 climate locations, generated average weekly heat transfer rates that were then entered into the DOE–2.1C model to calculate the energy impact of each foundation type. A similar application of this model was subsequently published by Oak Ridge National Laboratory (see *Oak Ridge National Laboratory Building Foundation Design Handbook*, Oak Ridge, Tennessee, ORNL/Sub/86–72143/1), which verified the efficacy of the University of Minnesota model.

L. Heat Pump Performance by Location

The rated seasonal energy efficiency ratio and the heating seasonal performance factor for heat pumps are based on their performance in a climate region similar to St. Louis. Since the draft standards cover the entire country, it was necessary to account for the variations in heat pump performance with climate variations. Ratios of the performance factors (heating and cooling) for a given location were calculated using ASHRAE bin data with a nominal two-ton load. This was done for each of the 45 base cities in the energy data base and extended by regional multipliers to all of the locations in the data base (see *Background of Development Process*, Position Paper 2–4, pages A.57–65).

M. Equipment Oversizing

In developing these draft interim standards, the detrimental effects of equipment oversizing were acknowledged, and DOE determined to promote limitation of its occurrence. However, because estimates of peak building loads involve some uncertainty, the draft interim standards allow equipment capacity to exceed the calculated design load by up to 25 percent. The 25 percent allowance is consistent with industry recommendations (see *ASHRAE Handbook, 1985 Fundamentals*, ASHRAE, Inc., Atlanta, GA). Where the next available size exceeds this limitation or a larger size is required to provide adequate air flow rates, the next larger size may be used. DOE believes that this decision still allows the designer a great deal of latitude in equipment sizing while at the same time protecting the homeowner from the inefficiencies that result from severe oversizing.

N. Duct Insulation

Duct insulation was viewed as an important avenue for reducing energy consumption in new residences. However, because the variety of duct layouts, lengths, and locations is so vast, including duct insulation in the ARES optimization was not feasible. Rather, a one-time analysis of duct cost effectiveness in a few locations was used to establish minimum levels. This analysis is documented in Position Paper 4–12 (see *Background of Development Process*, pages A.130 and 131).

O. Cost-Effectiveness of Energy Conservation Measures

The primary criterion by which the energy conservation requirements of these draft interim standards are established is cost effectiveness. This is deemed essential by DOE because the legislation mandates that the standards achieve the "maximum practicable" savings of depletable energy sources and the "maximum practicable" use of non-depletable energy sources.

DOE developed an economic methodology for testing various levels of energy conservation measures to identify the most cost-effective among those readily available. The methodology evaluates conservation measures from the perspective of the new home owner, using a model of consumer investment opportunity that compares the economic "return" of conservation features with the return available to the owner from an equivalent alternative investment. The alternative investment was assumed to earn a fixed nominal rate of return. By comparing the performance of the alternative investment with the conservation investment, it is conceptually possible to calculate the justifiable first cost per unit annual energy cost savings for the conservation options. In practice, this economic test is easily executed by casting the test into the form of a common net present value calculation (see *Technical Support Document (ARES)*, Section 3, pages 3.1–7 and *Background of Development Process*, Position Paper 3–2, pages A.80–99]. The draft standards' economic performance is based on minimizing the net present value of all energy-related costs. By evaluating all energy-related cash flows, the methodology ensures that conservation expenditures required by these standards are good consumer investments. The theory behind the economic methodology is described in *Background of the Development Process*, Position Papers 3–1 and 3–2, pages A.66–A.99.

The methodology was developed as a result of extensive analysis and discussion among DOE staff and its consultants. The ASHRAE TEC recommended that the economic test should not be designed to be greatly sensitive to economic parameters that require significant future projections, such as energy prices. The ASHRAE TEC members assumed that standard life-cycle cost analyses would not be understood by many prospective users of the ARES software, nor trusted by the building industry in general. The ASHRAE TEC also believed that the initial purchaser of the home should not be required to bear the burden of energy conservation purchases which would not be cost effective within the initial period of ownership. The TEC consequently recommended to DOE that the period of economic analysis be limited to seven years, which was considered by them a typical period of occupancy by the original home buyer and that real fuel prices be assumed constant over that period.

The ASHRAE TEC recommendation for period of analysis is reflected in the ARES default option and will automatically be selected by the computer program if the user does not select the option to use an "extended life-cycle cost" procedure. However, because the default option is based on a fixed seven-year analysis period, the treatment of resale values and replacement costs cannot be generalized to longer periods. It is geared to first time homeowners where equipment replacement and resale are minimal. In selecting the extended life-cycle cost alternative, the user modifies the manner in which the cash flows are calculated over a longer period of time. Each energy conservation measure is assigned a useful life. Thus, for example, if the user specifies a 30-year analysis period for homes and HVAC equipment is assumed to have a life of 18 years, the furnace and air conditioner would be replaced once during the analysis. If equipment life is 13 years, itwould be replaced twice. Resale values are calculated similarly.

Although DOE accepted the TEC's recommendation that the period of analysis should reflect the average period the original purchaser retains and lives in a new residential building, DOE disagrees with some aspects of the

ASHRAE TEC recommendations including the seven year figure. Consequently, DOE included an "extended life-cycle cost" methodology in the software to allow users to account for longer analysis periods, if appropriate, and included in the text of the draft interim standards a provision calling for use of that methodology with certain recommended assumptions. The differences between the ASHRAE TEC recommendations on economic data inputs and the resulting adjustments made by DOE are described below.

Period of Analysis. Based largely on committee consensus and without citing supporting survey data, the TEC recommended to DOE that seven years was a reasonable estimate of the median period of ownership by the first home buyer. They recommended that this parameter not be subject to change by ARES users. Concern was expressed that users would not have ready access to data supporting longer periods of analysis and that this input was error-prone relative to other inputs permitted in ARES.

DOE determined that there was a need to make it possible for users to change the period of analysis in ARES. While the seven year period of home ownership was widely cited in the home building industry at the time the recommendations were developed, recent data indicate the average period of ownership of a home was 12 years in 1989 (see Pfister, John F., "Housing Turnover Rates: Nation Steady, But Regions Fluctuate", *The Chicago Title Guarantor*, Chicago Title and Trust Co., September/October 1990, Chicago, Illinois, pages 10 and 11).

Therefore, DOE recommends that a user select an analysis period of at least 12 years (a user could input a longer period). DOE recognizes that, just as demographics of regions vary, regional differences may impact the length of average ownership of any particular "new" home. DOE also invites comment on the question of whether the average holding period of the original purchaser should be the relevant study period or whether the useful building life is the better study period. Commenters recommending the latter should take into account the extent of higher investment costs (initial and replacement) and the impact these costs would have on the home building industry and subsequent purchasers.

Because long analysis periods must account for the replacement of some energy conservation features in future years, each energy conservation measure in the software data base may be assigned a useful life by the user. In analyzing cost-effectiveness, the software assumes each conservation measure must be replaced each time its useful life has expired. The purchase price is assumed to increase at the rate of general inflation.

Resale Value of Home. The TEC concluded that, using a life-cycle of seven years, the resale value of the home (actually of the energy conservation features of the home) must be accounted for at the end of the analysis period. However, since there is little reliable information on resale values of conservation measures, the TEC argued for a resale value (at the end of seven years) at the original purchase price in current (nominal) dollars.

DOE decided that the value of the home's ECMs at the time of sale should be based on linear depreciation from the time of purchase (i.e., straight-line depreciation). DOE recognizes that the market value of increased conservation features in a home is largely unknown and that, generally, lenders do not recognize lower energy costs when considering loan qualifications. However, Federal loan programs do provide avenues for recognizing energy cost savings and public awareness of the value of energy conservation is growing. Thus, DOE's method of quantifying increased resale values is a compromise between the extremes of no value, as would be suggested by some real estate and lending institutions, and the full calculated value based on a thorough accounting of ECM benefits.

Fuel Escalation Rates. The real rate of increase in fuel prices was recognized by the TEC as difficult to predict accurately. Its consensus was that many ARES users would not have ready access to information on reasonable escalation rates. They recommended that fuel prices would be assumed to increase at the rate of general inflation (i.e., a real price escalation rate of 0 percent).

While the Department recognizes that projections of fuel price escalation rates involve some uncertainty, it disagrees with the TEC's recommendationto fix those rates at 0 percent real in the ARES software. DOE's Federal Energy Management Program (FEMP) annually publishes forecasted fuel price escalations. The latest forecast is in *Energy Prices and Discount Factors for Life-Cycle Cost Analysis 1990* (NISTIR 85–3273–4, Rev. 5/90) which presents projected fuel price escalations for 5-year blocks and for each of four U.S. Census Regions. Converting these data to equivalent annual price escalation rates yields the values in Table 1.

TABLE1.—RESIDENTIAL FUEL PRICE ESCALATION RATES (PERCENT PER YEAR IN REAL TERMS) FOR 1990–2020 BY U.S. CENSUS REGION

Fuel type	North east	North central	South	West
Electricity	0.4	0.1	0.4	0.7
Fuel oil	2.6	2.8	2.6	2.8
Natural gas	3.5	1.9	2.6	2.5

Although these fuel escalation rates are used for analyzing proposed Federal building investments, they were derived from estimates by DOE's Energy Information Administration which are generally applicable and therefore suitable for use in the draft interim standards.

Alternative Investment Rate (Discount Rate). The Alternative Investment Rate (AIR) is used in the life-cycle cost-effectiveness analysis as an input for converting all future cash flows to present value. Since the objective of this analysis is to minimize the net present value of all energy-related costs, the selection of the AIR value clearly has a significant effect on the outcome and therefore on the resultant prescriptive standards. As discussed previously, the rate of return of the conservation investment for a potential new-home buyer should be equal to the rate of return (i.e., the AIR) of another investment that is in some sense equivalent to the buyer's spending money on energy conservation.

Two primary considerations for any investor are risk and liquidity. A low-risk investment, such as a common passbook savings account, normally provides a low rate of return. High-risk investments, conversely, must pay high interest rates to attract capital, capital that the investor may lose. Investments with low liquidity, such as long-term certificates of deposit, must also pay high rates to attract investors willing to tie up their money for long periods of time. Highly liquid investments generally offer lower interest rates since the principal amount is always available to the investor for withdrawal from the financial institution.

The ASHRAE TEC believed that an AIR of 5.5 percent was appropriate. 5.5 percent generally reflects the current passbook savings account rate, a low-risk, highly liquid investment.

DOE solicits public comment on two other approaches towards establishing the AIR. These approaches are based on DOE's own assessment of equivalency and yield AIRs higher than 5.5 percent. The Department agrees with the TEC

that a conservation investment is "low risk", but only in the sense that improving the conservation level of any ECM will always save the homeowner some money on his or her fuel bill. Whether this investment is cost-effective for the homeowner depends on many factors, both economic and climatic, other than fuel costs. The potential variability of some of these factors over the period of home ownership makes the investment somewhat risky.

Further, DOE considers a conservation investment to be highly illiquid: the money can not be recovered for any other use, at least during the time that the owner occupies the new home. As a consequence of both moderate risk and low liquidity, the Department recommends that an AIR higher than the passbook rate represents the rate for an "equivalent" investment for this homeowner.

Under the first DOE approach, the AIR is derived as follows: The Department recommends that inflation be set at 3.5 percent annually, as discussed in the subsection below on Inflation Rate. The current real (excluding inflation) discount rate as provided by FEMP for FY 1991 is 4.7 percent. This discount rate is published in the supplement to the Life-Cycle Costing Manual for the Federal Energy Management Program (NISTIR 85–3273). Since the FEMP discount rate is calculated annually from an average of U.S. Treasury bond rates and is representative of economic opportunity costs throughout the country, it may be appropriate for use in this proposal. (See 55 FR 2590–2599 (1/25/90) and 55 FR 48217 (11/20/90) for more information on this discount rate.) Combining the real discount rate of 4.7 percent with the inflation rate of 3.5 percent according to standard economic formulas results in DOE's recommendation of a nominal 8.4 percent discount rate for the AIR.

Under the second DOE approach, a real discount rate of 7 percent is used instead of 4.7 percent, yielding a nominal AIR of about 10.7 percent. Seven percent has been used by the Department of Energy in the past in developing energy efficiency standards for major consumer appliances. (See 54 FR 47921–47923 for a complete discussion of the selection of this discount rate.) The Department views 7 percent as the real rate of return for investment opportunities that are foregone to finance the purchase of energy efficient appliances and thus this figure may also be appropriate in the context of this proposal. Comments are solicited on the applicability of the approach discussed in 54 FR 47921–47923 towards the financing of residential ECMs.

Down Payment Percentage. The after-tax down payment recommended by the TEC was 10 percent; see *Background of Development Process*, page A.78. Generally, this percentage is correct when addressing Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA) guaranteed loans. However, conventional loans typically require a greater down payment, as reported by the Office of Thrift Supervision, *1988 Savings and Home Financing Source Book* (OTS Source Book 1988), Table 2, page D–2, where the loan-to-price ratio is 75.6 percent, indicating a down payment of 24.4 percent. DOE decided 24.4 was the more appropriate percentage because conventional loans represent approximately 80 percent of the residential mortgage loans issued in the United States according to the Mortgage Bankers Association of America.

Mortgage Interest Rate. Based on further analysis, DOE has determined that a reasonable mortgage interest rate of 9.87 percent (as opposed to the committee's default value of 9 percent) could be used based on rates as of June 1990 (see U.S. Department of Commerce (DOC), June 1990, *Survey of Current Business*, Washington, DC).

A document published by DRI/McGraw-Hill (see *Review of the U.S. Economy; Long-Range Focus*, Summer 1990, Table 7, Housing) indicates that the projected (new homes) average effective mortgage rate on loans closed between the years 1990–2015 will be 9.18 percent. DOE suggests that this value is also a reasonable national average.

Points. Estimates of the average points associated with new home financing vary. The TEC estimated average points at 4.8 percent. However, DOE suggests using the *OTS Source Book 1988*, see page D–2, as a reasonable data source because it is the most recent, authoritative, national source available. It reports the average value of initial fees and charges to be 2.19 percent. Although points are tax deductible and loan fees are not, the two were not separated in the document. The quantities are so small that not separating them will have little effect on any analytical results associated with running ARES.

Inflation Rate. The inflation rate is used to convert between the nominal and real rates used in the ARES analysis. Nominal rates include inflation; real rates do not. The relevant nominal rates used in the ARES analysis are the mortgage rate and the alternative investment rate. The inflation rate recommended by the TEC and the default option in ARES are both 4.0 percent. DOE recommends a 3.5 percent inflation rate since this figure reflects the Department's most recent base-case forecast of the long-range Gross National Product implicit price deflator (see FEMP NISTIR 85–3273).

Property Tax Rate. Property taxes vary widely from State to State and even within a particular State. The DOC's *Statistical Abstract of the United States* (DOC Statistical Abstract), Bureau of the Census, U.S. Government Printing Office, Washington, DC, presents property tax rates in selected large cities. Thirteen of the 17 cities studied in the PNL analysis (see Pacific Northwest Laboratory's November 1990, *Comparison of Residential Energy Codes*, Richland, WA.) are reported in the DOC Statistical Abstract. DOE suggests using the average rate for these 13 cities, 1.28 percent, as the national value for property taxes but suggests that local rates be used for locally set standards and that States setting standards use State averages.

Income Tax Rate. The marginal income tax rate paid by the home buyer determines the value of the mortgage tax deduction. The median income for buyers of new homes is $58,700, which falls in the 28 percent Federal tax bracket (see Chicago Title and Trust Company, 1988, *Who's Buying Houses in America?*, Chicago, Illinois). State income taxes vary widely; a typical value of 4.2 percent is the suggested DOE selection for analysis with the State income tax deductible from Federal income tax; see DOC Statistical Abstract. For default purposes, the median total effective tax rate input to ARES is set at 21 percent. However, users are directed to add the actual median State and local tax rate to the median Federal income tax rate in Appendix B to the draft interim standard.

Table 2 presents a comparison of the values of economic parameters for input into the ARES computer program as recommended by the ASHRAE TEC (default values) and as selected for investigation by DOE (alternative values) using best estimates for all input parameters, wherever possible based on recently published data. In some instances, a range of numbers is shown for a given parameter, e.g., 12–30 years for the "Period of Analysis." Ultimately, for purposes of this notice, and for reasons discussed above, DOE selected single values for each parameter and provided in the draft interim standards

for use of those values (see Appendix B of the draft interim standards). DOE envisions amending Appendix B annually to update it.

TABLE 2.—ECONOMIC PARAMETERS FOR ARES

Parameter	TEC default input value	Alternative input values
Inflation rate	4%	3.5–4.8%
Mortgage interest rate.	9%	9.18–9.87%
Points & loan fee.	4.8%	2.19–4.8%
Alternative investment rate.	5.5% (nominal)	8.4–10.7% (nominal)
Income tax rate	21%	31%
Property tax rate.	1%	1.28%
Down payment percentage.	10%	24.4%
Loan term	30 years	30 years
Period of analysis.	7 years	12–30 years
Fuel price escalation		
Oil	0%	2.6–2.8% *
Gas	0%	1.9–3.5% *
Electric	0%	0.1–0.7% *

* Depends on region

DOE will be conducting sensitivity analyses to determine the impact of a variety of numerical values relative to the inputs associated with the ARES economic parameters.[3] The public is invited to suggest economic parameters and values for these parameters which ought to be analyzed.

DOE's recommended economic parameters for input into the ARES computer program are shown in Table 3. As indicated above, these numbers appear in Appendix B to the draft interim standards.

TABLE 3.—DOE INPUT ON ECONOMIC PARAMETERS FOR ARES

Parameter	Input Value
Inflation rate	3.5%
Mortgage interest rate	9.18%
Points & loan fee	2.19%
Alternative investment rate.	8.4%–10.7% (nominal)
Federal income tax rate	28% (median) [1]
Down payment percentage.	24.4%
Loan term	30 years [2]
Period of analysis	12 years
Fuel price escalation	
Oil	2.6–2.8% [3]
Gas	1.9–3.5%
Electric	0.1–0.7%

[1] Add relevant State and/or Local income tax rate.

[2] *Loan term.* The average loan term for first mortgage loans as reported by the Office of Thrift Supervision in the *OTS Source Book 1988* at, page D–2 is 28.0 years for newly built, single-family homes. This average term indicates that a 30-year mortgage term is likely the most typical.

[3] Depends on region.

[3] The ARES computer program automatically uses the default value unless the user inputs another reliant value. The software will be revised to reflect DOE-recommended values when final interim standards are published.

P. Cost Data Base

To properly compute the cost effectiveness of various levels of energy conservation measures, the costs of those measures must be known. DOE designed the draft interim standards to allow local code officials to specify conservation measure costs appropriate to local economies. However, recognizing that some jurisdictions may not have the means to acquire reliable local cost data, DOE provides "default" costs, representative of regional average prices in the ARES software.

Envelope conservation measure costs were obtained from a survey taken by the National Association of Home Builders (ASHRAE Research Project 494–RP, *An Economic Data Base in Support of SPC 90.2: Costs of Residential Energy, Thermal Envelope and HVAC Equipment*, NAHB National Research Center, ASHRAE Research Project 494–RP, December 1, 1986), and are available for 11 geographic zones defined along State boundaries and a national average zone. These are listed on a per unit basis (e.g., dollars per square foot) for each level of a conservation measure (e.g., R–11 and R–19 wall insulation).

HVAC equipment costs are complicated to express because price is affected by both efficiency and capacity (size). This is significant in optimizing whole-house efficiency because a well-insulated house may require smaller (and cheaper) space conditioning equipment than would a poorly insulated house. DOE and its consultants collected extensive pricing information from major equipment suppliers and attempted to identify relationships among equipment efficiency, capacity, and cost. The relationship identified between equipment capacity and cost was coded into the software that embodies the standards. The relationship between equipment efficiency and cost was entered as default data and may be modified by local jurisdictions.

DOE encourages users of the draft interim standards to modify costs to reflect actual local conditions. However, it is emphasized that the conservation levels deemed cost effective are sensitive to the differential prices between levels. For example, the software is sensitive to the cost difference between R–11 insulation and R–19 insulation, not the absolute cost of either. Therefore, users, when changing the costs for a given energy conservation measure, must be careful that consistent cost changes are also made for other levels of that measure. Whenever possible, costs for all levels should be obtained from the same source.

Q. Solar Space Conditioning Alternatives

Simple "solar tempering" options of placing glazing dominantly on southern exposures were accommodated as trade-offs against required insulation and/or efficiency levels, but no credit was given for the integration of interior thermal mass with the glazing or for the use of thermal storage walls or active solar systems. These can only be addressed in the performance compliance alternative. As discussed in Position Paper 5–1 (see *Background of Development Process*, pages A.138–140), the TEC considered solar space conditioning technologies too complex and infeasible in too few locations to warrant their inclusion as practicable options in ARES. In particular, the TEC concluded that solar options should not be considered in the economic optimization that establishes the standards' energy consumption goal.

DOE recognizes that some solar space conditioning designs may be cost-effective in some locations. DOE is looking for ways to further stimulate the use of non-depletable sources of energy. DOE will be evaluating the suitability for incorporation by reference into the rule of privately developed test procedures for active solar technologies. Reliable test procedures for rating energy consumption are essential before a new energy conservation measure could be covered by the performance compliance path. Part of the process of evaluating privately developed test procedures would be a proposal for public comment and review under section 32 of the Federal Energy Administration Act, as amended, 15 U.S.C. 788. The Department welcomes suggestions on approaches for incorporating more measures in ARES that use non-depletable sources of energy.

R. Shading Devices

Simple overhangs, viewed as common and well-understood, were accommodated as trade-offs against other ECMs. Position Paper 5–3 (see *Background of Development Process*, pages A.142–145), discusses how overhang effects were calculated. The TEC thought that shading devices should be excluded as energy

conservation features from the optimization step for reasons similar to those for solar space conditioning and because many shading devices require correct user operation to achieve energy benefits (see Position Papers 5–2 and 5–3, Background of Development Process, pages A.141–145). DOE accepted the TEC's reasoning on the exclusion of shading devices.

S. Micro-Computer Program to Embody the Methodology for Developing the Draft Standards

Several factors prompted DOE to embody procedures for establishing energy conservation requirements in software. First, legislative mandate requires that compliance with the standards be based on demonstration of comparable energy performance rather than conformance to wholly prescriptive specifications. Second, the standards are intended to be extremely flexible in accommodating innovative or unconventional construction practices and in adjusting to new and emerging technologies. Finally, the standards are intended to be cost effective within local climates and economies. A software based system is the best way to automate generation of a performance standard which is based on a necessarily complex data base. That data base includes cost data, energy calculation methods, economic evaluation methodologies, and other procedures and algorithms necessary to establish cost effective standard requirements. The core of the resulting software is an optimization procedure that identifies the most cost effective combinations of energy conservation measures for a given location.

Another reason for embodying the standards in a micro-computer program is flexibility for local adaptation. It allows a local code agency to tailor the standard to local conditions. Local component costs can be entered to reflect the value of energy conservation measures in a particular area; local energy costs can also be entered to accurately value energy savings. The micro-computer program also allows the local agency to generate a standard based on local climate and weather. Over 881 locations are represented in the data base and other areas can be tied to these locations as required or desired by the code generating group. It also allows the agency to include or exclude particular energy conservation measures or building practices as befits local practice. For example, if the jurisdiction desires to exclude the use of reflective glass in residences, then this can be done before the standard is generated by excluding that energy conservation measure. This provides the jurisdiction with a means for generating standards that fit the code philosophy and economic conditions for a given area.

T. Automated Residential Energy Standard (ARES) Micro-Computer Program

When employing the ARES micro-computer program, the user simply identifies the building and energy types for which the standard is to be generated. If desired, energy or energy conservation measure costs can be changed, but this is not necessary to create a standard. The outputs of ARES are prescriptive packages and point systems that specify the component requirements of a building needed to comply with the standard. There are packages for each heating/cooling equipment combination specified by the user. There is also a list of specifications for a reference design that is used in the performance compliance path. It should be noted that all of the features of the draft interim standards are established on the basis of the optimal energy dollar/conservation investment mix. This differs from the more traditional approach in standards where levels are determined to increase energy savings over present practice. ARES makes no identification of current practice but actually identifies the most cost-effective levels based on the specified economic conditions.

It should also be noted that specific requirements of the draft interim standards do not exist until the local code generating organization (the jurisdiction) executes the ARES computer program with a set of economic data. At that time, the standard for that locale is generated, including the prescriptive packages, points tables, and performance reference design. This is in contrast with other standards that list specifications or targets usually based on a set of national economic and energy criteria.

U. Compliance

DOE has included three compliance paths in response to legislative requirements and comments received during public review of the November 1979 proposal. Subject to meeting the minimum design requirements representing generally accepted, good design practices, compliance is completed by following one of these paths. The energy use requirements for each of the conservation measures contained within the compliance paths were developed using the DOE 2.1C whole building simulation model computer program. First, DOE has included a prescriptive compliance path in response to extensive public comments on the November 1979 proposal advocating prescriptive standards. The second is a component performance approach which permits tradeoffs within a point system. The third performance compliance path requires a whole building energy analysis.

DOE agrees with those who expressed a need for a simple prescriptive set of requirements which when incorporated into the building design will assure compliance. Some home builders would be unduly burdened by having to demonstrate compliance using either of the other compliance approaches. DOE believes that the prescriptive compliance path responds to those needs while assuring that designs complying with this approach will be as energy efficient as a design complying with the other compliance paths. The prescriptive compliance path provides an extremely simple, prescriptive list of design options that must be included on a building to demonstrate compliance. The prescriptive list, known as a "package" of conservation options, is generated by the ARES software from the same energy data used in establishing energy consumption goals. To accommodate the various preferences of those seeking to comply with codes, those responsible for promulgating and enforcing codes and standards may generate any number of alternative packages, each of which emphasizes a different type or style of construction. The components of each package are selected such that a typical residence containing those options will use no more energy than allowed by the standard.

The point system path uses a set of forms and point credits for measures generated by the ARES software to demonstrate compliance with energy consumption goals. The point system is derived from the same energy data base used by ARES to establish the standards' energy consumption goals. It provides a simplified technique for calculating a proposed design's energy performance and allows a builder flexibility in designing a house to meet the standards' requirements.

The point system in effect allows tradeoffs among conservation levels of the major building components identified in the prescriptive package, such as decreasing the amount of wall insulation while increasing the efficiency of the gas furnace. This tradeoff ability allows a residential architect or designer to evaluate many different combinations of ECMs before

settling on a final design. This design must still comply with the voluntary standards by not exceeding the annual energy costs dictated by the prescriptive requirements. Although DOE anticipates that the point system will be a very desirable path to compliance due to its design flexibility, the Department also believes that the process of looking up numbers in the points data tables and then performing extensive algebraic calculations will limit its useability.

To make the points compliance path more user-friendly, DOE has developed a microcomputer program that automates the data search and calculations. This program is called Automated Compliance for Residential Energy Standards, or ACRES. ACRES greatly decreases the time and effort involved in evaluating tradeoffs under the points system. For each house type/heating fuel combination, ACRES displays the individual ECM points and grand total points reflecting the basic prescriptive requirements (i.e., the "target design"). The ACRES program simultaneously displays the individual ECM and total points for a proposed design entered by the user. As the stringency level of any ECM is changed, ACRES instantly recalculates the points total and states whether the proposed design complies by comparing this total to the target design total. The ACRES user therefore receives continuous and immediate feedback on whether his or her design choices comply with the energy conservation requirements of the local building code jurisdiction.

The installation and use of ACRES, as well as additional background information, is contained in a special technical support document, DOE/CE-0345, *ACRES 1.2—User's Guide*. DOE emphasizes that ACRES is not a part of the Interim Voluntary Performance Standards *per se*, but rather a tool developed by the Department to assist the public in demonstrating compliance with these standards in jurisdictions that may adopt the ARES approach. The "manual" calculation method described in Section 7.0 and Appendix D of this proposal is equally valid for demonstrating compliance. DOE solicits comments on the utility of ACRES, the clarity of its display screens, and the completeness of its User's Guide. Interested parties with access to personal computers are urged to install and use the ACRES program before commenting.

DOE recognizes both the benefits and costs of implementing whole building energy performance standards as proposed in the November 1979 notice. A whole building performance approach provides the most open product competition and design freedom and the least inhibition to the introduction of new technologies. However, it also requires a time consuming energy performance analysis of every new home design which is costly and difficult to enforce. These difficulties were a major impetus for the development of three different compliance paths, including the development of the ARES software. DOE believes that open competition and broad design flexibility is provided for the design of the vast majority of new homes by the component performance (points system) compliance path. Furthermore, DOE believes that the combination of the whole building performance compliance path plus the regular updating of the standards can prevent the standards from inhibiting the introduction of new technologies.

V. Comparison of the DOE Draft Interim Voluntary Standards with Model Energy Codes

DOE has compared its draft interim standards and the TEC recommended standards to two voluntary model energy codes, one of which has been adopted in State and local building codes and an updated version that requires levels of conservation exceeding those of the previous model code. The existing model codes used are:

(1) The Council of American Building Officials' (CABO) Model Energy Code of 1986 (MEC–86). This model code is based on the ANSI/ASHRAE/IES Standard 90A–1980.

(2) The CABO Model Energy Code of 1989. MEC–89 is an updated version of CABO's model code that requires levels of conservation exceeding those of ASHRAE 90A–1980.

These model codes are voluntary in the same sense as the DOE standards. That is, they have been made available to States and localities for voluntary adoption into building codes.

The energy and economic impacts of these codes, the draft interim standards, and the TEC recommended standards were evaluated in 17 climate-diverse U.S. cities. The results of these comparisons are shown in Figures 1 through 3. Figure 1 displays the net life-cycle cost savings of the various standards relative to those of the MEC–86 standard. All costs (and savings) indicated are net present values of cash flows over a 25-year analysis period, using an 8.4 percent discount rate. Note that life-cycle cost *savings* relative to MEC–86 are shown. Figure 2 shows the life-cycle *energy cost* savings of the standards. Finally, the increases in *first costs* resulting from building to the various standards' requirements are shown in Figure 3, again relative to MEC–86. In all figures, the MEC–86 standard is considered the baseline and the impacts of the other standards are shown relative to it. The methodology used to calculate the net present costs (and savings) indicated is identical to the methodology used in ARES. The economic and financial parameters used are identical to those recommended by DOE with the exception of the analysis period which was 25 years. Costs are those that would be experienced by an average homeowner.

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Figure 1

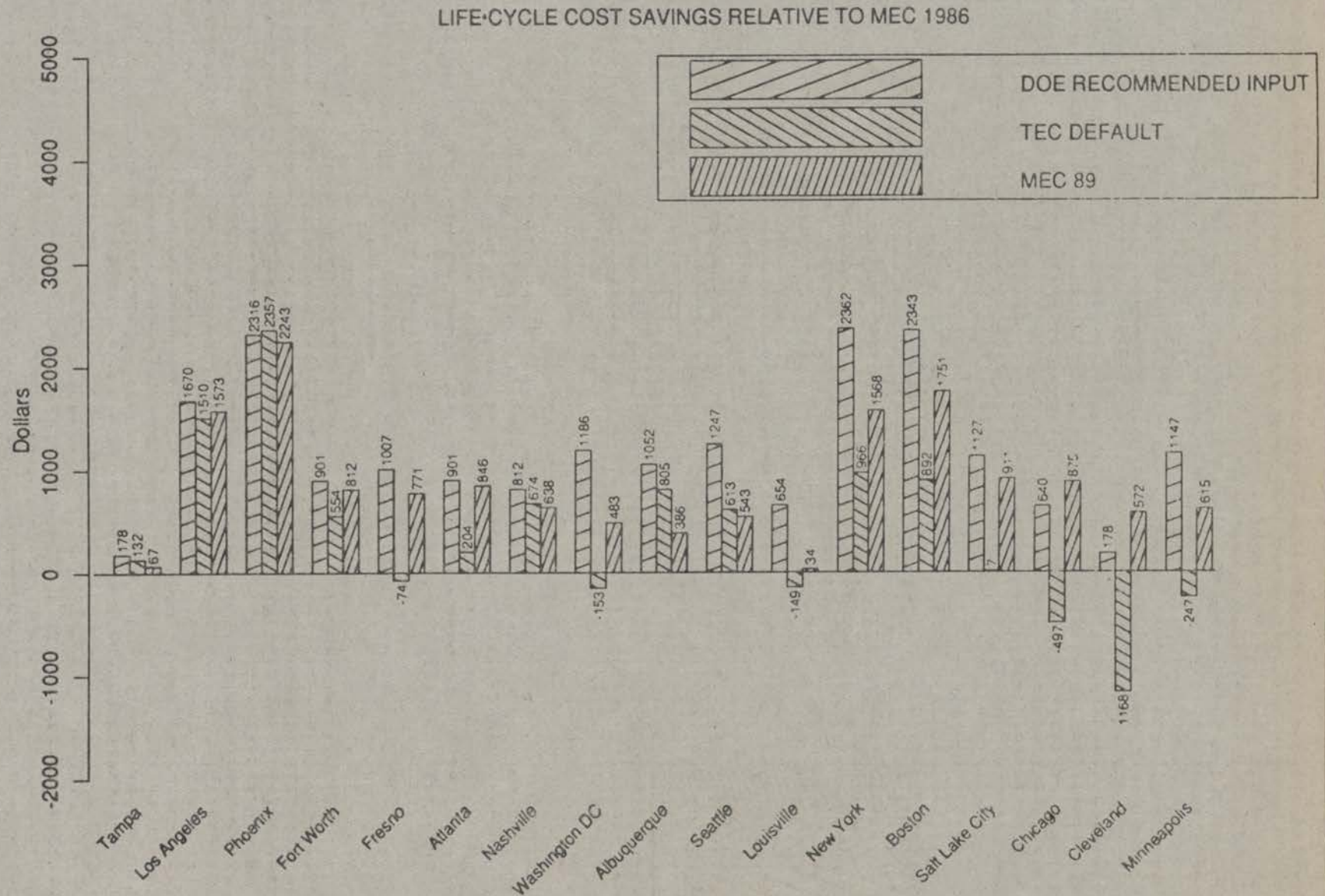
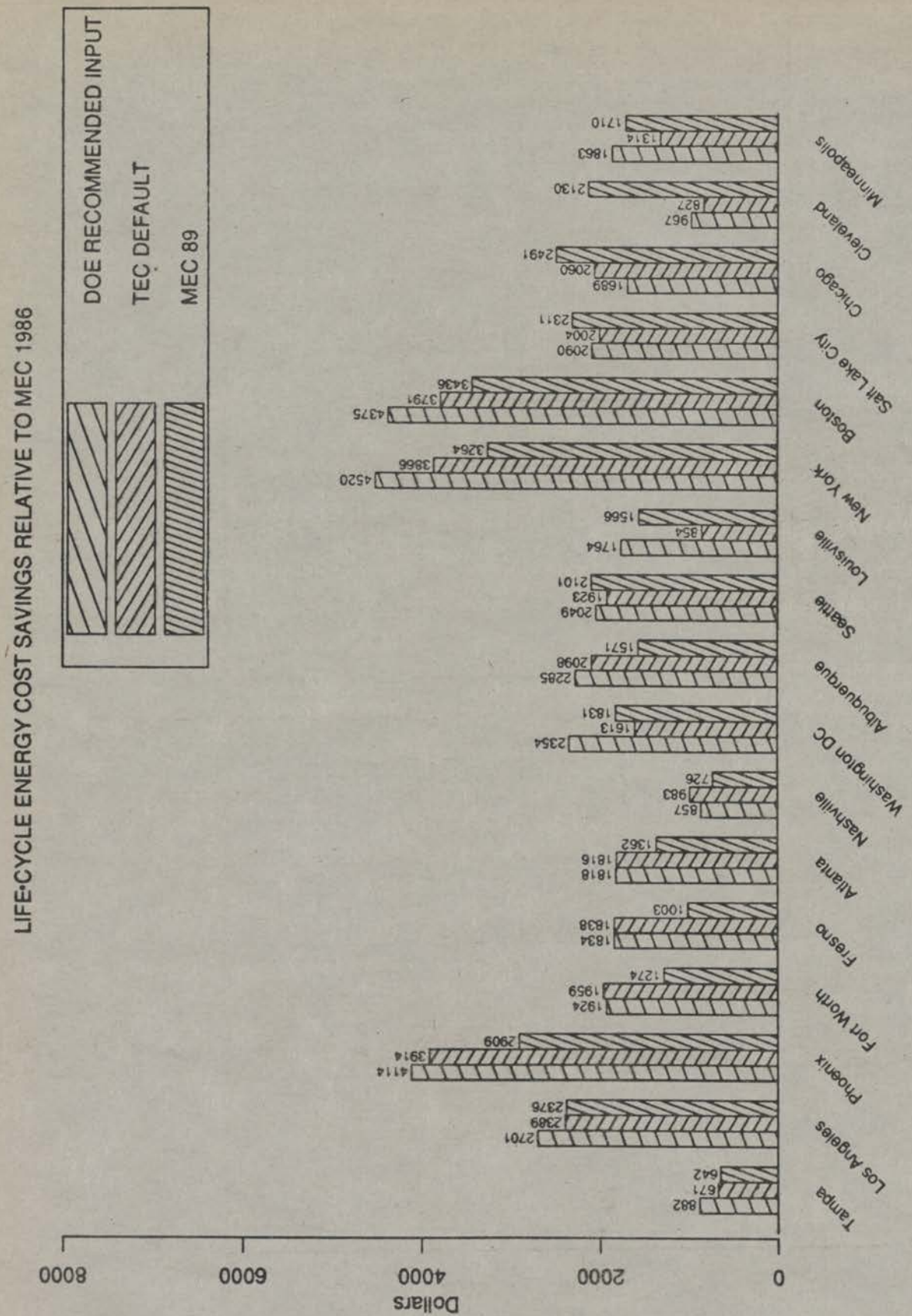

LIFE-CYCLE COST SAVINGS RELATIVE TO MEC 1986
DOE RECOMMENDED INPUT
TEC DEFAULT
MEC 89
Dollars
5000
4000
3000
2000
1000
0
-1000
-2000
Tampa
Los Angeles
Phoenix
Fort Worth
Fresno
Atlanta
Nashville
Washington DC
Albuquerque
Seattle
Louisville
New York
Boston
Salt Lake City
Chicago
Cleveland
Minneapolis

Figure 2


LIFE-CYCLE ENERGY COST SAVINGS RELATIVE TO MEC 1986
DOE RECOMMENDED INPUT
TEC DEFAULT
MEC 89
Dollars
8000
6000
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Minneapolis
1710
1314
1863
Cleveland
2130
827
967
Chicago
2491
2060
1689
Salt Lake City
2311
2004
2090
Boston
3436
3791
4375
New York
3264
3866
4520
Louisville
1566
1354
1764
Seattle
2101
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Albuquerque
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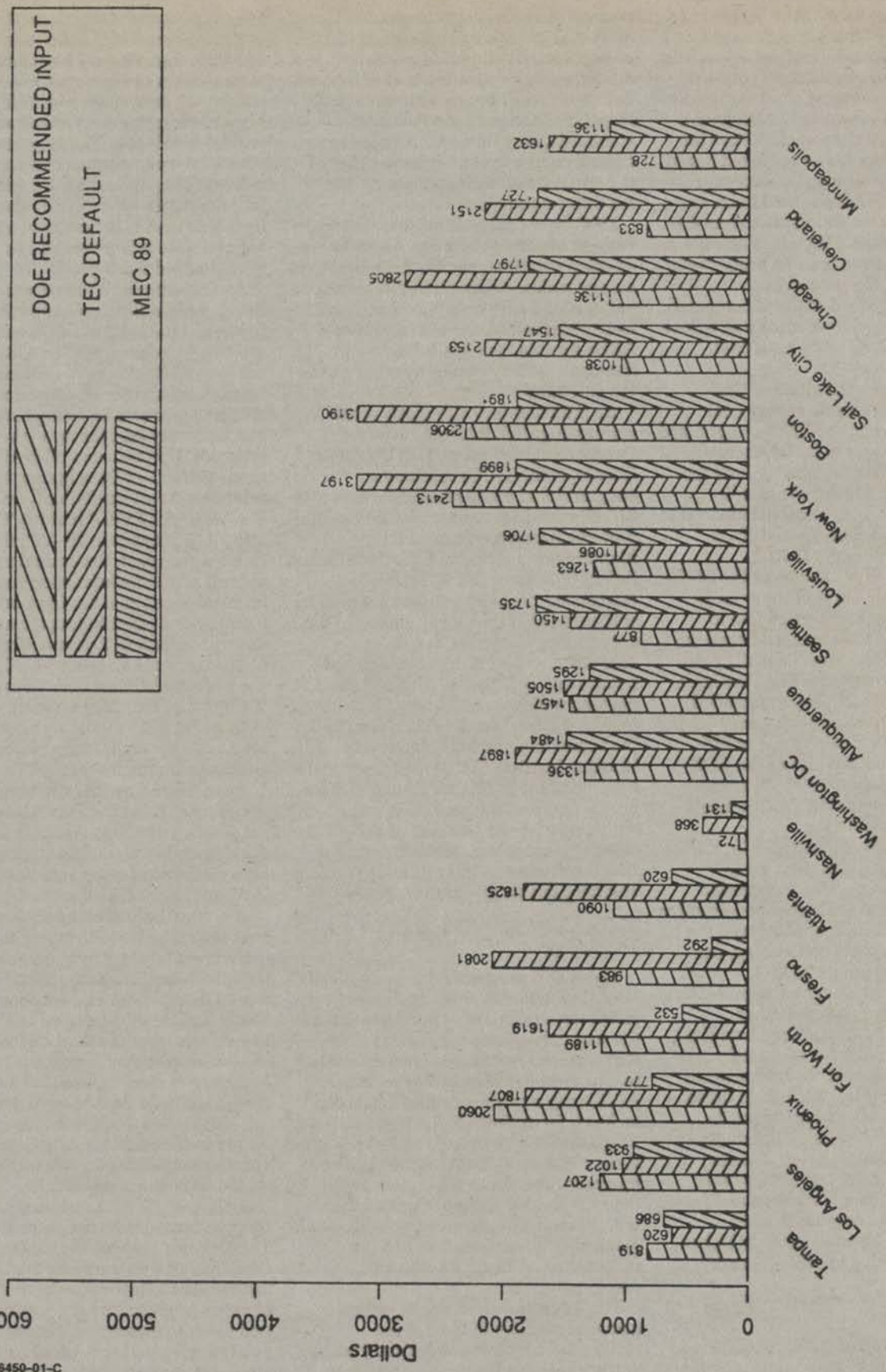

Figure 3

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Figure 1 shows that, with a few exceptions, the standard generated with DOE recommended input values results in the lowest life-cycle costs (highest life-cycle cost savings) of all standards (taller bars represent better economic performance than the shorter bars for the same location). The standard based on TEC default inputs shows poorer performance, although in all but a few cases, it is more cost effective than the MEC–86 standard. MEC–89 is always more cost effective than its predecessor, and is usually the second best performing standard of those compared. With a few exceptions, mostly in colder climates, MEC–86 is the least cost effective.

Figure 2 shows the effect of the standards on life-cycle energy cost savings relative to the MEC–86 standard (taller bars represent better energy performance than the shorter bars for the same location). All standards analyzed save energy costs compared to the MEC–86 baseline. Generally, a standard based on the DOE recommended input values or the MEC–89 values is the best performer in the colder climates. In the moderate to warm climates, the standard based on TEC default inputs saves slightly less than the DOE standard. The standards generated by the DOE recommended input values are more energy cost saving than MEC–89 in nine cities. The life-cycle energy cost savings of the DOE standards relative to MEC–86 range from 12 to 63 percent in the 17 climate-diverse cities studied.

Figure 3 shows the increase in homebuyer first costs required to comply with the various standards. Taller bars represent higher construction costs. Although it generally saved the most life-cycle costs and energy, the standard based on the DOE recommended input values is generally equal to or lower than the other standards in first cost. When based on TEC default inputs, the standard occasionally exceeds the first costs of the MEC standards, although in those locations it tends to save the most.

The DOE recommended input values (in Appendix B of the draft interim standards) indicate that DOE's draft interim standards save energy and reduce homeowner energy costs, without imposing unacceptably higher first costs, relative to MEC–86 or 89.

W. Use of the Recommendations by Others

The foundation of DOE's voluntary standards is a microcomputer program called ARES. The ARES software analyzes prototypical residences in a user-specified location to identify the most cost-effective combination of energy conservation features. The annual energy operating cost of a home built with these optimal features is the singular criterion of the resulting standards. Any home with an estimated annual energy cost at or below that of the optimal home complies with the resulting standard.

DOE intends that State and/or local code jurisdictions will use ARES to develop location-specific, cost-effective energy codes. Although no States have yet used the software (it has not yet been distributed), the usefulness of ARES for this task has been demonstrated by others who have used the software.

As the voluntary standards were undergoing DOE internal review, the Department of Housing and Urban Development (HUD) received a congressional mandate (Public Law 100–242, Section 568) to upgrade the thermal protection requirements of its Manufactured Housing Construction and Safety Standards (MHCSS). HUD recognized the DOE voluntary standard software (ARES) as a valuable tool for determining cost-effective energy conservation levels in manufactured houses and contracted with PNL to develop a new manufactured housing standard based on the ARES results. At the same time, the Manufactured Housing Institute (MHI) also proposed a new standard to HUD. Although MHI's proposal differed from PNL's recommendations because of differences in input parameters, MHI also used the ARES software as their primary standard development tool.

X. Updating of the Standards for New Technology

The ARES program addresses specific HVAC equipment, solar equipment, windows, and construction elements of the thermal envelope. For each of these items, there are discrete choices related to energy conservation. For example, ARES only analyzes ceiling insulation as R–11, R–19, R–30, R–38, R–49, or R–60. Wall insulation can only be R–11, R–13, R–19, R–23, or R–26. Windows can only be single, double, or triple pane/with thermal breaks, without thermal breaks, with heat-absorbing glass, or with low-E glass. Gas furnaces can only have efficiencies of 78, 80, 85, 90, or 95 percent.

The discrete values are based on common practice in the current residential construction industry using easily available building materials and components, and on the Federally-mandated minimum efficiencies for HVAC equipment and domestic hot water heaters. DOE anticipates that as energy-conserving construction technologies change, new levels of insulation, new types of windows, and higher efficiency mechanical equipment will be developed. The Department has considered various mechanisms for incorporating these new developments into the ARES software. By their inclusion in ARES, new conservation technologies will be aided in acceptance in real-world markets.

As an example, a manufacturer has developed an R–15 insulation batt that fits in a standard 2 x 4 stud wall. There are two possible ways for ARES to accommodate this new wall insulation level. A building code official using ARES to generate an energy standard can manually add the new level into the program. This is accomplished by going to the ECM Cost Data Menus in ARES, selecting "Wall Insulation", and using the "ADD A LEVEL" feature. The code official then types in "R–15", the initial construction cost, the annual non-fuel operation and maintenance cost (zero for insulation), and the fraction of installations requiring replacement during the default 7-year analysis period OR (if using the Extended LCC Method) the physical lifetime of R–15 insulation. With this information entered, ARES then treats R–15 as simply another wall insulation option when performing its economic optimization routine.

As indicated by this example, manual updating of ECM data is a "local" approach to revising ARES since a specific code official is entering the information and using it to establish a local energy standard only.

A second approach to accounting for new technologies is to revise the ARES software internally by programming modifications. These modifications would incorporate any additional ECM levels and their associated cost and failure rate/lifetime data directly into the permanent ARES program. This approach is more "global" in the sense that these updates can be distributed to all ARES users and are not dependent on the particular knowledge of one specific building code official. DOE would have the responsibility for managing the global updating of ARES through formal rulemaking proceedings: The Department would propose modifications on a regular basis, solicit comments on its proposals or other changes proposed by the general public, and (after evaluation of comments) publish a revised version of ARES available for nationwide distribution.

Comments are solicited on the appropriateness of either of the above

two approaches, or other suggestions for keeping ARES current, so as not to discourage innovation and widespread use of emerging conservation technologies. DOE particularly solicits comments on how frequently building codes can be updated without having adverse practical impacts on homeowners, designers, or builders.

DOE emphasizes that updating the ACRES design tool program discussed previously to reflect changes to ARES can also be done in one of two ways: If a code official makes a local ECM level change before running ARES, that level will be automatically embedded in the ACRES program and displayed as an available option to the ACRES user. The option is available even if the new level has not been selected as optimum (i.e., the prescriptive requirement) for that ECM. If, under the global approach, DOE makes software changes to ARES, these same changes must be programmed into ACRES only if the code official has not re-generated the standards for his/her local jurisdiction.

III. Description of the Draft Interim Standards

A. Summary of the Draft Interim Standards

The draft interim standards have been developed for use by standard and code officials and Federal agencies assisting private sector housing who are interested in or required to establish effective new building design standards. The draft interim standards are structurally formed to provide these officials with a tool to establish cost-effective energy conservation standards for the most common residential building types in as many as 881 climate-representative locations in the United States. They are based on a micro-computer program developed especially to generate the draft interim standards. The micro-computer program, ARES, generates prescriptive packages and a point system for several building types and climate locations based on the optimal energy dollar/energy conservation investment mix for the particular location. ARES contains default economic information that represents national averages for energy conservation measures, materials and labor costs, and energy costs by geographic region. The local standard or code jurisdiction can amend the default values to suit energy conservation measures and energy prices specific to that location. An energy conservation measure is a building material or component whose use will affect the energy consumed for space heating, space cooling, and/or domestic hot water. Ventilation was explicitly excluded from the standards because few residences incorporate any mechanical ventilation, except for kitchens and bathrooms, and its use in those rooms is largely dependent upon idiosyncratic occupant behavior.

The goal of the draft interim standards is the maximum practicable energy performance of new residential structures. In establishing such standards, DOE sought consistency in the energy conservation requirements for all locations covered by the draft interim standards, flexibility in the requirements placed on building code and standards officials and homebuilders and designers, and equivalency among the three compliance paths. Another major objective was that the draft interim standards software be written so that, over time, emerging technologies could be incorporated without major revisions.

Subject to minimum design requirements which apply regardless of compliance path, the draft interim standards contain three distinct compliance paths that vary in complexity and flexibility. Each compliance path is based on the several key energy conservation measures that DOE concluded were most appropriate for residential building design. Each energy conservation measure was examined for its energy saving potential in each climate-specific location and for each of several building types. The economically optimal package of such measures, and their associated level of conservation, are the basis of the draft interim standards. To provide flexibility within the draft interim standards, different energy conservation levels of an energy conservation measure can be traded off against changes in the levels of other energy conservation measures as long as the total minimum design requirements are met, and the energy requirements for the structure are equal to or better than those of the optimal package.

The three compliance paths are as follows:

Prescriptive—Easy-to-follow design compliance packages designed for ease of use and quick identification of compliance requirements. This path may contain several equivalent packages at the discretion of the code official.

Points—An option-oriented method designed for ease of use but with greater flexibility than the prescriptive approach. Calculation of point totals is required before compliance can be assured.

Performance—A method based on analysis allowing the greatest flexibility and proper consideration of unique building and system designs. This process is more complex than the others as it requires the use of a separate calculation tool to determine the projected energy use of the proposed building design and then a comparison with a reference design to determine compliance. The separate calculation tool is not part of the draft interim standards. It is described, however, in Section 8.0. The performance method does not allow easy identification of the impacts associated with a change in an energy conservation measure. It requires considerable time and expertise and is not appropriate for simple trade-off calculations.

B. Section-By-Section Description of the Draft Interim Standards

1. Section 1.0: Purpose

The purpose section states that the standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy. It further states that, except in the case of Federal buildings, use of the draft interim standards is voluntary. However, DOE recommends use of these draft interim standards for the design of energy efficient new non-Federal residential buildings.

2. Section 2.0: Scope

Section 2.0 indicates that the proposed voluntary performance standards for new residential buildings apply to the design of buildings with three stories or fewer including single-family detached housing, multi-family low-rise buildings such as duplexes, townhouses, condominiums and garden apartments, and manufactured housing (mobile homes), all of which have complete kitchen facilities for each dwelling unit.

Hotels, motels, convents, monasteries, jails, barracks, and nursing homes, which generally provide housing for transient residents or do not have complete kitchen facilities in each dwelling unit, are not included in the draft interim standards. Standards for these types of buildings were promulgated by DOE on January 30, 1989, as part of voluntary performance standards for new commercial and multi-family high-rise residential buildings (54 FR 4538). The draft interim standards cover the design of the envelope and heating, cooling, and domestic water heating equipment and systems that are a permanent part of the building.

3. Section 3.0: General Definitions and Acronyms

Section 3.0 provides a listing of all the general definitions and acronyms used in the text of the draft interim standards. It also points out that definitions not found in draft Section 3.0 can be found in the 1986, or later, edition of *Terminology of Heating and Ventilation, Air Conditioning, and Refrigeration*, if appropriate, as published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), 1791 Tullie Circle, NE., Atlanta, GA 30329.

4. Section 4.0: Developing the Criteria and Demonstrating Compliance

Section 4.1:General. Section 4.1 defines the scope of Section 4.0 and recommends adoption of the standards by building code and standard officials, States, local governments, and other governing jurisdictions in establishing building codes and other construction control mechanisms. The scope is described as the procedures for generating building energy consumption goals and compliance packages.

Section 4.2: ARES Input Requirements. Section 4.2 describes the inputs to the ARES computer program that are needed to generate standards for a particular location or region. The draft interim standards are designed to generate cost-effective energy conservation levels that apply to specific climatic locations. They are also designed to provide flexibility to users in generating requirements that are responsive to local needs. Requirements for a jurisdiction are based on a user-selected city representative of the jurisdiction's climate and other conditions such as fuel prices and local economies. If these conditions differ within jurisdictional boundaries, separate requirements may be generated for sub-regions. This section also describes inputs that are needed to define the types of housing that will be covered and the limits on equipment types to generate prescriptive requirements in the standards. The section provides for use of certain economic inputs set forth in Appendix B which is to be updated by DOE on an annual basis.

Sections 4.3 and 4.4: Generation of Criteria and Standards. Section 4.3 simply requires the running of ARES with the input developed above to generate localized criteria for the standards. Section 4.4 goes on to describe how individual standards for building types or locations can be combined to avoid unnecessarily redundant standards. ARES produces criteria for each location and building type specified. Criteria for adjacent locations may be the same or similar, and it is not necessary to maintain separate standards for each locale in such cases.

Section 4.5: Compliance Procedures. The draft interim standards include a set of minimum requirements (Section 5.0) and provide for three alternate methods of compliance with the standards. The three methods include: The Prescriptive Compliance Path (Section 6.0), the Point System Compliance Path (Section 7.0), and the Performance Compliance Path (Section 8.0). This section describes the most appropriate use of each. DOE is cognizant of the wide range of complexity in the design of residential buildings and the commensurate need for different compliance paths to respond to them. There are those who build using only conventional construction practices and equipment and need only a simple listing of requirements which, if incorporated, will assure compliance with the standards. Others need greater design freedom and wish to incorporate more complex combinations of design features for which they wish appropriate credit. Finally, a few people design innovative buildings and wish to use features that are unique but have demonstrable benefits for which they need appropriate credit. DOE believes that the compliance approaches incorporated in the draft interim standards respond to these disparate needs. The prescriptive approach is most appropriate where it is desirable to avoid extensive calculations and complexity. The Point System Compliance Path is appropriate when a more innovative design is desired, or when the prescriptive method does not provide the necessary design flexibility. It requires more manual calculations than the Prescriptive Compliance Path (the calculations are automated when using ACRES). Finally, the Performance Compliance Path is best used when the most innovative design concepts are being considered. The Performance Compliance Path allows the trade-off of energy use among the building systems so long as the total calculated design annual energy cost does not exceed the limit prescribed. It requires the use of a computer program to simulate the operation of the various systems and to model building design energy use.

5. Section 5.0: Minimum Design Requirements

This section contains the minimum design requirements and is used inconjunction with any one of the three alternative compliance paths. These minimum design requirements represent broadly accepted design practices which should not be subject to trade-off against other energy conservation measures.

Section 5.2: Building Thermal Envelope. This subsection provides minimum requirements that apply to the building thermal envelope of the conditioned space including the ceilings, walls, slab floors, floors over unconditioned spaces, foundation walls, basement walls, crawl spaces, doors, windows, and other assemblies or components separating conditioned space from unconditioned space or outside air.

Section 5.3: Infiltration/Ventilation Requirements. This subsection contains requirements for controlling air leakage into and out of conditioned spaces within a building's thermal envelope. Air leakage impacts both the energy performance of a building and the concentrations of pollutants in the indoor air. In seeking cost-effective energy requirements for new residences, DOE was cognizant of the complex interactions of these issues and the uncertainty involved in calculating infiltration-related energy consumption and air quality.

The requirements set forth in this subsection are intended to limit air leakage without reducing air exchange rates below what is typical of current practice homes. The tightest infiltration control measures prescribed by these standards are designed to maintain air exchange rates not below approximately 0.35 air changes per hour (rates will vary by climate).

The Department acknowledges that, in locations where radon has been determined to pose a health threat, infiltration control measures have an impact on the radon concentrations in a home. Appendix C of the draft interim standards contains recommended radon control measures for locations in which there is evidence of a radon problem. This appendix applies only where such evidence exists, and is not intended to influence construction practices in general.

Section 5.4: Heating, Ventilating, and Air Conditioning (HVAC) Systems and Equipment. This subsection contains minimum requirements for heating, ventilating, and air conditioning systems and equipment. The equipment addressed is limited to the following:

- Equipment using single-phase electric power;
- Unitary air conditioners and heat pumps with capacities less than 65,000 BTU/h;

• Warm air furnaces with capacities less than 225,000 BTU/h input; and
• Boilers with capacities less than 300,000 BTU/h input.

The listed equipment types are most common in residences. Equipment types other than those listed are probably more complex systems that require more detailed specifications and are probably more applicable to building types such as those addressed in the DOE Commercial Standards.

For mechanical equipment or systems not included in the minimum requirements, the user is referred to the applicable DOE Commercial Standards (54 FR 4538) or 10 CFR part 435 subpart A.

Section 5.5: Domestic Hot Water—DHW. This subsection contains minimum requirements for non-solar domestic water heating equipment for the most common residential-type units only. These are distinguished from other, larger systems that may be used in some multi-family applications. The common residential equipment must be clearly identified on the basis of physical and/or performance parameters, such as upper limits on storage capacity and input rating. Domestic water heating equipment that does not fall under the criteria of residential-type service water heating equipment as defined by the subsection, such as central systems, will have to meet the criteria set in the applicable DOE commercial standards (54 FR 4538).

6. Section 6.0: Prescriptive Compliance Path

This section provides procedures for demonstrating compliance using the prescriptive method.

Section 6.2: Procedure Used in Producing the Prescriptive Compliance Packages. The requirements of the prescriptive compliance packages are developed using the procedures described in Section 6.0 of the draft interim standardsThe procedures in Section 6.0 allow for the development of a basic prescriptive compliance package, as well as several alternative compliance packages that meet the specific needs of the jurisdiction.

Separate prescriptive packages are developed for all applicable combinations of location, housing type, and heating and cooling systems, within a jurisdiction.

7 Section 7.0: Points Compliance Path

This section provides procedures for demonstrating compliance using the points method.

Section 7.2: Procedure to Develop the Points Compliance Path. A separate table and appropriate equations for each building type/equipment type combination are provided for demonstrating compliance using the points path. The equations use point values that are developed for each location within the jurisdiction using the procedures described in Section 4.1 of the draft interim standards.

The calculation of points for compliance is a two-step process:

• First, the determination of the total points ("Target Points") that the proposed home design would receive if built with the basic package of energy measures; and

• Second, the determination of the total points ("Design Points") that the proposed home design would receive if built with the proposed energy measures. The number of Design Points is not to exceed the number of Target Points to comply with the proposed standards. In demonstrating compliance, Target Point and Design Point totals are computed using the methods, procedures, and materials in accordance with proposed Section 7.0

8. Section 8.0: Performance Compliance Path

This section provides procedures for demonstrating energy performance equivalent to that of the basic prescriptive packages using a performance compliance approach. The provisions of this compliance path are intended to permit the broadest use of materials, systems, or methods of construction for which benefits can be reliably demonstrated. Where designs result in annual energy costs equivalent to or less than those that would result if the design were built with the basic package of energy measures, using the same energy types, compliance is demonstrated.

The performance compliance path is intended for residential designs that are atypical and that cannot readily be shown to comply under the package or points compliance paths. It provides an opportunity to use innovative materials, equipment, regional practices, and new technologies within the framework of the standards.

Performance analysis of energy costs is applicable to energy use for space conditioning only. Domestic water heating points are calculated separately, using the points compliance path, and then combined with the space conditioning points determined in this section. In this process, compliance trade-offs between the two are allowed within the limits on any feature prescribed in minimum design requirements (Section 5.0).

Estimates of energy used in other areas such as cooking or appliances are provided to allow calculation of energy costs under rate schedules that depend on total energy use. However, these uses do not vary between the proposed design and the reference design and can not be used as a variable in the compliance process.

Compliance through the performance path uses a reference approach. The procedure consists of calculating energy costs for the proposed or candidate design and comparing those with energy costs for a reference design with characteristics defined in this section. These costs are then converted to points and combined with points for domestic hot water to produce total design points and target points. If the calculated total points for the proposed design *do not* exceed the calculated total points of the reference design, the proposed design complies with the standards.

9. Appendix A: Explanation of Automated Residential Energy Standards (ARES) Computer Program

Appendix A contains explanatory material about the ARES computer program. It will provide background information when the standards are published separately.

10. Appendix B: DOE Input Assumptions on Economic Parameters for ARES

Appendix B sets forth certain economic inputs to be used in conjunction with Section 4.0 to generate the standards. As noted above, DOE intends to update this appendix annually.

11. Appendix C: Radon Control Measures

Appendix C sets forth information for the consideration of a building designer regarding radon control. This appendix was developed after informal consultation with Environmental Protection Agency staff. It is intended for use in conjunction with the infiltration/ventilation paragraph 5.3 of Section 5.0 (see *Background of Development Process*, page A.12).

12. Appendix D: Points Compliance Forms

Appendix D includes an example of blank, sample calculation tables and the point computation summary form. This form and the tables are used in conjunction with Sections 7.0 and 8.0.

IV. Procedural Requirements

A. Environmental Review

DOE performed an Environmental Assessment (EA), *Environmental Assessment: In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings*, Department of Energy, publication DOE/CE-0247, Volume 7 of 7, of the draft interim standards pursuant to the implementing regulations of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500–1808 and the National Environmental Policy Act of 1969, as amended, (NEPA) Pub. L. 91–190, 40 U.S.C. 4221 et seq.) and DOE Guidelines implementing NEPA. This EA addresses the possible incremental environmental effects attributable to the application of the draft interim standards. This section summarizes the Finding of No Significant Impact (FONSI):

1. Contents of the Environmental Assessment

The analysis was conducted by first reviewing the standards now in use by State and local jurisdictions, referred to as the baseline, and then comparing them to the draft interim standards through computer simulation. The EA calculates the differences likely to occur in various indoor air pollutant concentrations and the concomitant health and safety effects to occupants as a result of the building design changes between the existing and proposed standards. This EA addresses only those differences likely to occur in new non-Federal residential building construction.

The EA analyzed two alternatives, the draft interim action and the no-action alternative which is also the baseline.

2. Specific Findings

Habitability: In the assessment, habitability is expressed in terms of changes in various indoor air pollutant concentrations and concomitant occupant health and safety impacts that can be related to design changes attributed to the draft standards. No significant adverse effects were found that relate to building habitability.

Various pollutants are released continuously or intermittently within residential buildings. An indoor air quality computation model that uses specific pollution emission values (release rates) for selected materials was used to calculate pollutant concentration levels in the case-study residences based on baseline conditions and on the draft interim standards. Incremental pollutant concentrations were calculated for particulate matter, carbon monoxide (CO), carbon dioxide (CO2), nitrogen dioxide (NO2), radon, and formaldehyde. Also, the potential impact on indoor air quality of chemical compounds and microorganisms was assessed at a more qualitative level because the quantitative detail necessary for simulation modeling is not available.

Particulate Matter: Implementation of the draft interim standards are expected to have no effect on the level of particulate matter in residences.

Carbon Monoxide: Currently, computed indoor concentrations for CO from cooking and smoking are well below levels associated with health risk. The draft interim standards would have no effect on CO concentrations.

Carbon Dioxide: Residential units designed under the draft interim standards are expected to maintain low concentration levels of CO2. The health risk from indoor CO2 concentrations would not change.

Nitrogen Dioxide: Release of NO2 in residential indoor environments is small. The computed concentrations of NO2 for the draft interim standards residential units are the same as for the baseline residential units.

Radon: Computed values indicate that, for site-built residential units, indoor radon concentration levels of the baseline and the draft interim standards residential units would be the same.

Formaldehyde: The draft interim standards reduce the level of formaldehyde concentrations in some locations and increase concentrations at other locations. Although the magnitude of the change is small, increases could affect certain sensitive individuals who have a very low threshold of sensitivity to formaldehyde.

Chemical Compounds: A large number of chemical pollutants have been identified in indoor residential air. Many of these chemical compounds are either odorous, irritants, or suspected carcinogens. The draft interim standards are not expected to measurably increase or decrease health risks due to chemical pollutants in residential indoor air.

Microorganisms: Under certain conditions, microorganisms can become indoor air pollutants with a potential health risk. The most severe indoor microorganism pollution problems result from growth of organisms on a damp surface or on stagnant water collected on horizontal surfaces. The draft interim standards are not expected to change the levels of indoor microorganism pollution.

Outdoor Environmental Impacts: On a national basis, there would be a net improvement in outdoor environmental quality from reduced fossil fuel usage. The draft interim standards reduce estimated insulation levels in some locations that were tested, and increase them in other sites. As a result, the net impact on insulation production is expected to be so small that the general magnitude of airborne pollutants from its production should not change.

EPA Review: As required by Section 7(c)(2), 15 U.S.C. 776 (c)(2), of the Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 761 *et seq.*, a copy of this notice was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of the draft interim standards on the quality of the environment. The Administrator did not submit comments.

3. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) was issued by DOE on July 10, 1989.

B. Review Under Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether the draft interim standards are a "major rule," as defined by Section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule.

A preliminary determination was made that this issuance does not constitute a "major rule." DOE, however, has prepared an *Economic Analysis* that follows the philosophy and intent of Executive Order 12291 of February 17, 1981, in order to determine whether or not the draft interim standards in fact do not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The analysis concluded that no significant direct or indirect adverse impacts are expected to occur as a result of issuing voluntary performance standards for new residential buildings. The draft interim standards would only be voluntary for the non-Federal sector.

The economic analysis concludes that there are no significant adverse effects from adopting the draft interim standards. The draft interim standards will result in a positive net flow of benefits from energy savings that more than offset higher capital construction

and other costs, when compared to current practice. By calculating the life-cycle cost of new construction as currently practiced and the construction that would be required by the draft interim standards, the analysis results in a calculation of regional and national net benefits of the draft interim standards over a 15-year time period.

Because compliance with the draft interim standards is voluntary, the level of penetration of the proposed standards into State and local energy codes is uncertain. Our analyses considered two scenarios: 1) a maximum penetration scenario of 100 percent compliance immediately upon the standards' issuance and 2) 100 percent compliance phased in over a five-year period. Both scenarios, especially the former, result in estimates near the upper limit of total impacts that could be expected from the voluntary standards.

The national net effect of the standards, assuming its immediate and full penetration, ranges from benefits of nearly $930 million in the first year to $1.04 billion in the fifth year. These net effects are based on the net present value of energy savings and capital costs over a 15-year period. For the fifth year, the year with the largest net effect, the capital costs of construction to comply with the standard are $1.2 billion. The energy savings accrued over the 15-year period are nearly $2.2 billion. The net effects under the phased-in scenario are similar, but first year benefits are only $168 million.

As measured in the gross value of industry output and employment, the total impact of the standards was estimated using Department of Commerce input- output tables. The energy savings of each structure built to comply with the standards were accounted to the year of construction, although in reality they would be spread over the 15-year analysis period. In the fifth year of implementation, the year showing the greatest impacts, the combined effect of output changes results in a net loss of approximately $2.5 billion in output.

This decrease is the difference between a $2.2 billion increase in output due to increased capital expenditures for construction and a $4.7 billion decrease in output due to decreased expenditures for energy. This net effect represents about 0.5 percent of the total U.S. Gross National Product.

The greatest total effect on employment is a net loss of 10,800 jobs during the fourth year. While nearly 31,800 jobs are gained as a result of increased construction, over 42,600 are lost due to decreased energy expenditures. This estimate of employment effects, which might be overstated because it does not take into account alternative patterns of consumption, is less than 0.01 percent of total U.S. employment.

The standards show a net benefit to all geographic regions of the U.S. Because the proposed standards are designed to optimize consumer economics on a local basis, these estimates of total economic impact should remain qualitatively similar, varying primarily in magnitude, if actual adoption is below 100 percent.

Three years have elapsed since the above-mentioned economic assessments were performed. DOE evaluated the sensitivity of the results to changes in key parameters that might vary with time. The most significant of these is the price of energy. Increasing fuel prices tend to increase the total net benefit of the standards but also increase the total impact on output and employment. Decreasing fuel prices lessen the net benefits and total effects on output and employment.

In the intervening years, real fuel prices have remained constant or decreased slightly as reported in DOE's State Energy Price and Expenditure Report (SEPER). The conclusion that the draft interim standards have net benefits to society is valid considering the small changes in fuel prices since the study was done and the overwhelming orientation of the results toward net benefits.

OMB Review

Pursuant to Section 3(c)(3) of E.O. 12291 this notice was submitted to the Director of the Office of Management and Budget (OMB) for review. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to prepare an initial regulatory flexibility analysis in certain circumstances. The draft interim standards in this notice are intended to be voluntary. Since they will not have the force and effect of law, DOE certifies that they will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an initial regulatory flexibility analysis.

The analysis contained in Section 3.2 of the *Economic Analysis* determined that this rulemaking will have no impact on small business concerns.

D. Paperwork Reduction Act

No information collection or record keeping requirements are imposed on the public by the draft interim standards. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, as amended, or its implementing regulations, 5 CFR part 132.

E. Federalism Effects

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient "substantial direct effects," then Executive Order 12612 requires preparation of a Federalism Assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule. Sections 2 through 5 of Executive Order 12612 set forth the principles, criteria, and requirements to be used in preparing a Federalism Assessment.

The principal impacts of the draft interim standards will be on new non-Federal residential buildings. These draft interim standards are being published pursuant to legislation that states that "except in the case of Federal buildings, voluntary performance standards shall be developed solely as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings." Therefore, the draft interim standards would not have a substantial direct effect on the States, the relationship between the States and Federal government, or distribution of the power and responsibilities among various levels of government.

F. Section 32 Findings

The draft interim standards reference several building industry standards and require building designers to use the industry standards in order to comply with the draft interim standards. As required by Section 32 of the Federal Energy Administration Act of 1974, as amended (15 U.S.C. 788), DOE must identify, by name, the organization that promulgated such standards and state whether the organization complied with the participatory requirements specified in the section.

The building industry standards referenced in the draft interim standards are listed below:

ASHRAE Handbook—Fundamentals Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1985.

ASHRAE Handbook—Fundamentals Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1989.
ASHRAE Handbook, HVAC Systems and Applications Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1987.
ASHRAE Handbook—Systems Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1984.
ASHRAE Standard 90A–1980, Energy Conservation in New Construction, American Society of Heating Refrigerating and Air Conditioning Engineers, Inc.
ASHRAE Standard 62–1981, Ventilation for Acceptable Indoor Air, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Atlanta, GA, 1981.
ASTM E283–84, Test Method for Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors, ASTM, Philadelphia, PA 19106, 1984.
"A Study and Review of Existing Data to Develop a Standard Methodology for Residential Heating and Cooling Load Calculations," ASHRAE Transactions, Vol. 90, Part 1, 1984.
Fibrous Glass Duct Construction Standard, 5th Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1979.
Heat Loss Calculation Guide No. H–21, 2nd Edition, 1977, Hydronics Institute (HI).
HE–1–1980–Manual For Electric Comfort Conditioning, National Electrical Manufacturers Association (NEMA).
HVAC Duct Construction Standards--Metal and Flexible, 1st Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1985.
HVAC Duct Leakage Test Manual, 1st Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1985.
Insulation Manual 1979, National Association of Home Builders (NAHB).
RAC–1–1982, American National Standards Institute/Association of Home Appliance Manufacturers (ANSI/AHAM).
Residential Load Calculation Manual J, 7th Edition, Air-Conditioning Contractors of America (ACCA).
Simplified Energy Analysis Using the Modified Bin Method, American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1983.

DOE finds that while each of the organizations listed promulgates its standards in a manner that allows for the response and critique of interested persons, none of the organizations follows procedures that meet all of the specific requirements of Section 32.

As required by action 32(c), DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing final interim standards.

V. Public Comment Procedures

A. Public Participation

DOE encourages the maximum level of public participation in the development of interim standards. Individuals, Federal agencies, architects, engineers, utilities, State and local governments, building code organizations, builders, builder associations, building owners, building owner associations, consumers, and others are urged to submit written statements on today's draft. The Department also encourages interested persons to participate in the public hearings to be held in San Francisco, California; Chicago, Illinois; Washington, DC; and Atlanta, Georgia, at the times and places indicated at the beginning of this Notice. An Environmental Assessment and Economic Analysis have been prepared in connection with this proposed rule and are referenced in the text of this Notice. Copies of these documents will be available for public inspection in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of these documents by writing to the Hearings and Dockets Office at the address listed at the beginning of this notice.

DOE has established a comment period of 90 days following publication of this notice, for interested persons to comment on this proposal. All comments will be available for review in the DOE Freedom of Information Reading Room.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth below.

Comments should be labeled both on the envelope and on the documents, "Voluntary Residential Building Standards (Docket No. CAS–RM–79–112–A)", and must be received by the date indicated in the beginning of this notice, in order to assure full consideration. Eight (8) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation. All written comments received on the draft interim standards will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and seven copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item, (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry, (3) whether the information is generally known or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) an indication as to when such information might lose its confidential character due to the passage of time, and (7) whether disclosure of the information would be in the public interest.

C. Public Hearings

1. Procedure for Submitting Requests to Speak

In order to have the benefit of a broad range of public viewpoints in this proceeding, DOE will hold four public hearings. Listed earlier in this notice are the dates and addresses for the hearings. Any person who has an interest in these proceedings, or who is a representative of any group or class of persons having an interest, may request an opportunity to make an oral presentation at any of the public hearings. Such requests should be labeled both on the letter and the envelope, "Voluntary Residential Building Standards (Docket No. CAS–RM–79–112–A)", and should be sent to the address, and must be received by the date specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted.

Each person to be heard is requested to bring to the hearing eight (8) copies of their statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in a letter requesting to make an oral presentation.

Lists of the persons to be heard at the hearings will be available upon request from the Office of Hearings and Dockets. The lists will also be available for inspection in the DOE Freedom of Information Reading Room.

2. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearings, to schedule the representative presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearings. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations.

The rebuttal or clarifying statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearings. The presiding official will determine whether the question is relevant or whether time limitations permit it to be presented for a response.

Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made, and the entire record of this proceeding, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may also purchase a copy of the transcript from the transcribing reporter.

DOE may consolidate any or all of the public hearings if DOE does not receive sufficient interest concerning a particular hearing. In that event, DOE will contact each speaker and provide that person the opportunity to present testimony at any of the other hearings. However, DOE will not provide transportation or lodging for such speakers to appear at a hearing. DOE will include for the record at one of the other hearings a copy of the statement of any person who requested to speak at a hearing that was canceled by DOE.

The draft voluntary interim standards set forth below are issued in Washington, DC, on

Dated: August 7,1992.

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

BILLING CODE 6450-01-M

Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings

Sec.

1.0 Purpose.
2.0 Scope.
3.0 General Definitions and Acronyms.
4.0 Developing Criteria and Demonstrating Compliance
5.0 Minimum Design Requirements.
6.0 Compliance Path.
7.0 Point System Compliance Path.
8.0 Performance Compliance Path.
Appendix A—Explanation of Automated Residential Energy Standards (ARES) Computer Program.
Appendix B—DOE Input on Economic Parameters for ARES.
Appendix C—Radon Control Measures.
Appendix D—Points Compliance Forms.

Section 1.0 Purpose.

1.1 These standards are energy conservation "voluntary performance standards' for the design of new residential buildings which are not Federal buildings.

1.2 The "voluntary performance standards" are developed principally as guidelines for the purpose of providing technical assistance to State and local building code officials and to Federal agencies providing financial assistance for building new residential buildings, regarding requirements they should adopt for the design of energy efficient new residential buildings.

Section 2.0 Scope.

2.1 These "voluntary performance standards" apply to the design of new residential buildings, with three stories or less, including single-family detached housing, multi-family low-rise buildings such as duplexes, townhouses, condominiums and garden apartments, and manufactured housing (mobile homes), all of which have complete kitchen facilities for each dwelling unit.

2.1.1 Hotels, motels, convents, monasteries, jails, barracks, and nursing homes, which are transient in nature or do not have complete kitchen facilities in each dwelling unit, are not included in these standards.

2.1.2 The "voluntary performance standards" cover the design of the building envelope, and heating, cooling, and domestic water service heating equipment and systems that are a permanent part of the building.

Section 3.0 General Definitions and Acronyms

3.1 Definitions for the purpose of these standards:

Annual Fuel Utilization Efficiency (AFUE) means the ratio of the annual output of useful energy delivered by fossil fuel heating equipment to the total energy used by the equipment. The AFUE is expressed as a percentage.

Automatic Control means a self-acting, operating control actuated by an impersonal influence, such as a change in electrical current, fluid pressure, temperature, or other functional variable.

Building means any new structure except those specifically identified in Section 2.1.1, to be constructed for residential occupancy which includes provision for a heating or cooling system, or both, or for a hot water system.

Building Design means the architectural and engineering drawings and specifications used for the construction of a new building.

Building Thermal Envelope means the elements of a building which enclose conditioned spaces and through which thermal energy may be transferred to or from the ambient atmosphere or to or from unconditioned spaces.

Building Type means the classification of the building by usage or configuration.

Candidate Design or *Design Home* means a prospective building design to be tested for compliance.

Conditioned Floor Area means the floor area of the conditioned space measured from the interior wall surfaces.

Conditioned Space means a space within a building that is intended to be either heated or cooled.

Default Value means a preestablished value to be used in a calculation procedure when an alternative value has not been provided.

Domestic Hot Water means the supply of hot water for purposes other than space conditioning.

Dwelling Unit means a building or building space intended to house people, comprising one or more rooms designed for living, sleeping, and eating, and having cooking and sanitary facilities.

Energy Conservation Measure means a building material or component whose use will affect the energy consumed for space heating, space cooling, and/or domestic hot water.

Energy Factor means a measure of the overall efficiency of a water heater based on its recovery efficiency, standby loss, and energy input.

Federal Building means any building to be constructed by, or for the use of, any department, agency, corporation, or other entity or instrumentality or the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, which is not legally subject to State and local building codes or similar requirements.

Fenestration means any light-transmitting opening in a building envelope. Included are: glazing materials of glass or plastic, with the framing, mullions, muntins, dividers, external and internal shading devices, and integral (between the glass) shading system.

Heating, Ventilating and Air-Conditioning (HVAC) System means a system that provides heating, ventilating and/or air-conditioning within a building for the purpose of occupant comfort.

Heating Seasonal Performance Factor (HSPF) means the total heating output (BTU) of a heat pump during its normal annual usage period for heating divided by the total electric input in watt-hours during the same period.

Manufactured Housing (Mobile Home) means a dwelling to be constructed for residential occupancy according to HUD Manufactured Housing Construction and Safety Standards as set fourth in 24 CFR part 3280.

Multi-Family Low-Rise Residential Building means a residential building containing two or more dwelling units and designed not to exceed three stories above grade.

Non-Depletable Energy Sources means sources of energy, excluding minerals, derived from incoming solar radiation; thermal, chemical, or electrical energy derived directly from conversion of incident solar radiation; wind, waves and tides; lake or pond thermal differences; and energy derived from the internal heat of the earth.

Opaque Areas means all exposed areas of a building envelope that enclose conditioned space and do not transmit solar radiation.

Orientation means the directional placement of a building surface with reference to its outward normal.

Reference Design or *Target Home* means a generic building design, of the same occupancy type as the *Candidate Design* or *Design Home*, which complies with the prescriptive requirements of these standards and has specified assumptions concerning shape, orientation, HVAC, and other system parameters.

Residential Building means a building to be used as single-family housing or containing multi-family dwelling units.

Sash Crack means the sum of all perimeters of all ventilators, sashes, doors, and other envelope penetrations based on overall dimensions of such parts expressed in feet, counting two adjacent lengths of perimeter as one.

Seasonal Energy Efficiency Ratio (SEER) means the total cooling of an air conditioner (BTU) during its normal annual usage period for cooling divided by the total electric energy input, in watt-hours, during the same period.

Single Family Housing means buildings each of which contains one dwelling unit.

Thermal Mass means materials with significant heat capacity and surface area which affect building loads by storing and releasing thermal energy.

Unconditioned Space means a space within a building that is not conditioned (see *Conditioned Space*).

Unitary Cooling and Heating Equipment means one or more factory-made assemblies which normally include an evaporator or cooling coil, a compressor and condenser combination, and in some cases a heating function as well.

Voluntary Performance Standards means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

3.2 *Definitions not found.* For definitions not found in Section 3.1, the 1986 or later edition of *Terminology of Heating and Ventilation, Air-Conditioning, and Refrigeration*, as published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), hereinafter referred to as ASHRAE terminology, shall apply to these standards.

3.3 *Acronyms and Abbreviations.* For purposes of these standards, the acronyms and abbreviations have the following meanings:

ach—Air Changes Per Hour.
Af—Floor Area in ft^2.
AFUE—Annual Fuel Utilization Efficiency.
ANSI—American National Standards Institute.
ARES—Automated Residential Energy Standard.
ARI—Air-Conditioning and Refrigeration Institute.
ASHRAE—American Society of Heating, Refrigerating, and ——— Air-Conditioning Engineers, Inc.
ASTM—American Society for Testing and Materials.
BTU—British Thermal Unit.
cfm—Cubic Feet Per Minute.
CFR—Code of Federal Regulations.
COP—Coefficient of Performance.
DEC—Design Energy Cost.
DHW—Domestic Hot Water.
DOE—U.S. Department of Energy.
DOS—Disk Operating System.
DP—Design Points.
DX—Direct Expansion Cooling Equipment.
ECM—Energy Conservation Measure.
EF—Energy Factor.
ELA—Effective Leakage Area.
°F or F—Degrees-Fahrenheit.
ft—Foot.
ft^2—Square Foot.
ft^3—Cubic Foot.
GAMA—Gas Appliance Manufacturers Association.
h or hr—Hour.
Hg—Mercury.
HI—Hydronics Institute.
HSPF—Heating Seasonal Performance Factor.
HVAC—Heating, Ventilating, and Air-Conditioning.
IBM—International Business Machines.
I-B-R—Institute of Boiler and Radiator Manufacturers.
K—Thousand.
kW—Kilo-Watts.
lb—Pound.
lin. ft—Linear Foot.
LPG—Liquified Petroleum Gas
MBTU—Millions of BTUs
min.—Minute.
R—Thermal Resistance.
SEER—Seasonal Energy Efficiency Ratio.

SMACNA—Sheet Metal and Air-Conditioning Contractors National Association.
TC 4.7—ASHRAE Technical Committee 4.7, "Energy Calculations".
TEC—Target Energy Cost.
W—Watts.
WH—Window Height.
Wh—Watt-hour.
WYEC—Weather Year for Energy Calculations.

Section 4.0 Developing Criteria and Demonstrating Compliance

4.1 *General.* This section describes the procedures to be used by those promulgating codes and standards, such as State and local building code officials and Federal agencies setting standards for financial assistance for new residential buildings. These are procedures for generating building energy consumption goals and criteria for the prescriptive and points compliance paths using the (ARES) micro-computer program, and for demonstrating compliance with the standards. The standards are recommended for adoption in building codes and other construction control mechanisms by those entities responsible for setting energy conservation standards for new non-Federal residential buildings. They include villages, townships, cities, counties, States, and other regional or national governmental jurisdictions.

4.2 *ARES Input Requirements*

4.2.1 *Location.* From the list of locations found in ARES, select the closest location climatologically to the jurisdiction. This is not necessarily the closest location geographically. Care should be taken to select a location that has corresponding weather conditions. If the jurisdiction is large enough to encompass areas with distinctly different climatic characteristics, select a location to represent each area.

4.2.2 *Building Type.* Select a building type in ARES for each building type to be built within the jurisdiction. For building types not included in ARES, or for proposed designs employing energy conservation measures not included in ARES, use Section 6.0, the Performance Compliance Path.

4.2.3 *Economic Variables and Energy Cost Data.* Select the appropriate input for each of the following items: inflation rate; mortgage interest rate; alternative investment rate; Federal income tax rate; down payment percentage; loan term; period of analysis; and fuel price escalation (see Appendix B).

4.2.4 *Property Tax Rate.* Revise the default property tax rate in ARES to reflect the annual tax rate for the jurisdiction, expressed as a percentage of the initial cost. Where the jurisdiction is large and encompasses multiple tax rates, use the average rate.

4.2.5 *Income Tax Rate.* Revise the income tax rate in ARES to reflect the marginal income tax bracket of the typical homeowner. Use the median Federal income tax rate in Appendix B and add the median State and local tax rates. Express the tax rate as a percentage.

4.2.6 *Local Cost Multiplier.* Revise the Local Cost Multiplier in ARES to reflect overall prices different from the regional average or to adjust for overall inflation in construction costs.

4.2.7 *Cost Data Base.* Review and adjust the ARES cost data base to reflect the construction costs in the jurisdiction for each of the envelope, HVAC, and domestic hot water energy conservation measures. Where jurisdictions are large and costs vary from one area to another, use average costs. Select the appropriate ARES cost data base from Table 4–1.

TABLE 4–1.—ENERGY CONSERVATION MEASURES COST DATA BASE FOR THE U.S.

Regional data base	States in region
National average	All
New England	CN, MA, ME, NH, RI, VT
Mid-Atlantic	DC, DE, MD, NJ, NY, PA
Mid-South	GA, NC, SC, VA, WV
Florida	FL
South Central	AL, AR, KY, LA, MS, OK, TN, TX
Central	IA, KS, MO, NB
North Central	IL, IN, MI, MN, ND, OH, SD, WI
Mountain	CO, NV, UT, WY
Southwest	AZ, NM
Pacific Southwest	AK, CA, HI
Pacific Northwest	ID, MT, OR, WA

4.2.8 *Prescriptive Equipment Types.* The Prescriptive Compliance Path can be used only with the combinations of heating and cooling equipment shown in Table 4–2 and with the domestic water heating equipment shown in Table 4–3.

TABLE 4–2.—PRESCRIPTIVE PATH EQUIPMENT TYPE COMBINATIONS

Heating equipment	Cooling equipment
Gas-fired furnace	Direct expansion
Oil-fired furnace	Direct expansion
LPG-fired furnace	Direct expansion
Electric resistance	Direct expansion
Electric heat pump	Electric heat pump

TABLE 4–3.

Prescriptive path water heating equipment
Gas-fired heater
Oil-fired heater
LPG-fired heater
Electric resistance heater
Electric heat pump

4.3 *Generation of Criteria*

4.3.1 *Prescriptive Package(s).* Run ARES to create the prescriptive package(s) for all of the geographic locations representative of the climatic areas of the adopting jurisdiction; all of the appropriate generic housing types (single-family detached, multi-family low-rise, and manufactured housing (mobile homes)) built in the adopting jurisdiction; and any appropriate economic scenarios for the jurisdiction.

4.3.2 *Point Systems.* Run ARES to create the point systems for all of the geographic locations representative of the climatic areas of the adopting jurisdiction; all of the generic housing types (single-family detached, multi-family low-rise, and manufactured (mobile) housing) built in the adopting jurisdiction; and appropriate economic scenarios for the jurisdiction.

4.4 *Generation of Prescriptive and Point Standards.* Compare the Prescriptive Package(s) run for each of the scenarios in Section 4.3.1 for differences. Where differences are significant for the climate, housing type, or economic scenarios, create separate standards for those categories. For example, there is no need to create separate standards for climatic areas where the packages do not vary significantly between climatic scenarios. For each resulting unique prescriptive package, include the corresponding point system.

4.5 *Compliance Procedures.* The standards include a set of minimum requirements, and then provide three alternative paths to demonstrate compliance with the standards. The alternative methods of achieving compliance are illustrated in Figure 4–1.

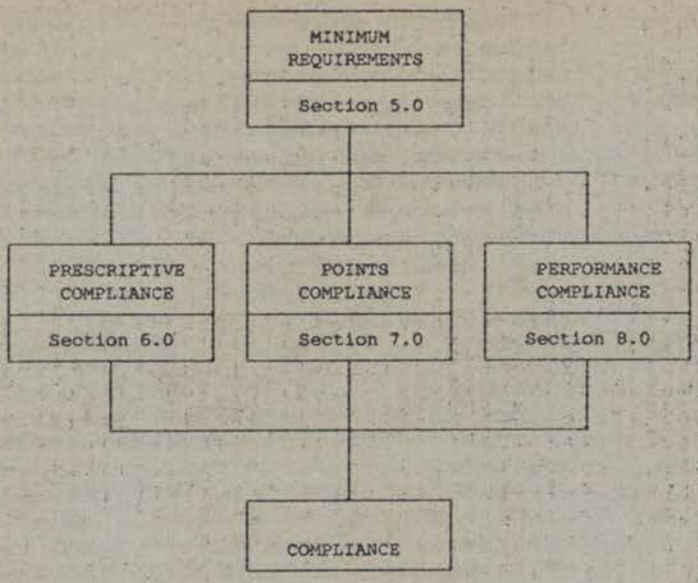

Figure 4-1—Schematic of standard compliance process.

A residential building design within the scope of these standards complies with the standards when it has been demonstrated that the design complies with the minimum requirements and any one of the three alternative compliance paths: prescriptive compliance path, point system compliance path, or performance compliance path.

4.5.1 *Advice on Selection of Compliance Path.* The following paragraphs provide advice which may be given to an applicant.

4.5.1.1 *Prescriptive.* Use the Prescriptive Compliance Path when the minimum amount of calculation and effort to achieve compliance is of primary concern. Its requirements can be readily specified in construction documents and are easily reviewed by code enforcement authorities. However, the Prescriptive Compliance Path only permits a few construction alternatives.

4.5.1.2 *Point System.* Use the Points Compliance Path when a more innovative design is desired, or when the prescriptive method does not provide the necessary design flexibility. It requires more calculations than the Prescriptive Compliance Path.

4.5.1.3 *Performance.* Use the Performance Compliance Path when the most innovative design concepts are being considered. The Performance Compliance Path allows the trade-off of energy use among the building systems so long as the total calculated annual energy cost of the design does not exceed the limit prescribed. It requires the use of an energy analysis methodology to simulate the operation of the various systems and to model building design energy use (see Section 6.0).

Section 5.0 Minimum Design Requirements

5.1 *General.* This section contains the minimum design requirements to be used by those promulgating codes and standards, such as State and local building code officials, and by Federal agencies setting standards for financial assistance for new residential buildings. These are requirements in the nature of construction specifications for design of the thermal envelope, infiltration and ventilation, heating, cooling, and domestic hot water systems and equipment. Use this section in conjunction with each of the alternative compliance paths: Prescriptive (Section 6.0), Point System (Section 7.0), or Performance (Section 8.0).

5.2 *Building Thermal Envelope.* Insulate all thermal envelope components to the minimum levels allowed by the point system of Section 7.0. The building thermal envelope includes the ceilings, walls, concrete slab floors on grade, floors over unconditioned spaces, foundation walls, basement walls, crawl spaces, doors, windows, and other assemblies or components separating conditioned space from unconditioned space or outside air.

5.2.1 *Door Thermal Requirements.* The opaque portions of all doors separating conditioned spaces from unconditioned spaces or outside air shall have a maximum thermal conductance of 0.395 Btu/h-ft^2-°F. Consider the light-transmitting area in doors which cover more than 10 percent of the surface area of the door as fenestration.

5.2.2 *Shading Coefficients for Fenestration.* Fenestration shall have shading characteristics within the range of those options in the Point System in Section 7.0.

5.2.3 *Water Vapor Control.* Use vapor retarders, ventilation, and mechanical humidity control as required by engineering calculations to maintain the thermal and moisture integrity of the building envelope. The design of buildings for energy conservation may increase the water vapor pressure differentials between the interior and exterior environments.

5.3 *Infiltration/Ventilation.* This subsection contains requirements for controlling air leakage into and out of conditioned spaces within the building thermal envelope. Special provisions for controlling radon gas entry into the structure in geographical locations where radon has been deemed to pose a

health threat are described in Appendix C of the standards.

5.3.1 Maintain a minimum average air exchange rate of 0.35 ach to maintain acceptable indoor air quality.

5.3.2 *Certification of Doors and Windows.* Windows and doors between conditioned and unconditioned spaces or outside air shall have a test-certified maximum air leakage rate. Perform tests in accordance with *ANSI/ASTM E 283–84, Standard Method of Test for Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors* at a pressure differential of 1.57 lb/ft² (equivalent to a 25 mph wind speed).

5.3.2.1 *Window Leakage.* All windows installed between conditioned and unconditioned spaces or outside air shall have a maximum air leakage rate of 0.37 ft³/min per foot of crack as determined under Section 5.3.2.

5.3.2.2 *Door Leakage.* All doors installed between conditioned and unconditioned spaces or outside air shall have a maximum air leakage rate of 0.37 ft³/min per ft² of surface area as determined under Section 5.3.2.

5.3.3 *Thermal Envelope Infiltration/Ventilation.*

5.3.3.1 *Foundations and Walls Below Grade.* Treat, caulk and seal foundation walls and walls below grade enclosing conditioned spaces to avoid the entry of moisture, chemicals, or radon gas.

5.3.3.2 *Exterior Joints.* Seal exterior joints, such as sole plate, wall frame corners, wall and ceiling joints, window and door frames, with a durable caulking material. Provide for differential expansion and contraction of the materials in joints between dissimilar materials, such as wood and masonry or concrete and metal, to provide a permanent seal for the joint.

5.3.3.3 *Outside Penetrations.* Use durable sealants to seal envelope penetrations between conditioned and unconditioned spaces or outside air, such as faucets, electrical outlets and wiring, and flues and vents and all penetrations through the top plate of exterior walls.

5.3.3.4 *Moveable Joints.* Provide for weatherstripped or gasketed moveable joints between doors and door frames and windows and window frames.

5.3.3.5 *Interior Joints.* Tape interior joints between the interior walls and ceilings to reduce air exchange.

5.3.3.6 *Exhaust Air.* Fit exhaust air vents from bathrooms, kitchens, and utility areas with back draft dampers to prevent air leakage into conditioned spaces while fans are not operating.

5.3.3.7 *Fireplaces.* Fit fireplaces with tight closing door assemblies on their combustion chambers. Seal the joint between the door assembly and the fireplace. Provide outside makeup combustion air using an operable damper to avoid loss of warm interior air during winter use. Fit the fireplace flue with readily accessible controls.

5.4 *Heating, Ventilating, and Air Conditioning (HVAC) Systems and Equipment.* This subsection addresses equipment using single phase electric power; unitary air conditioners and heat pumps with capacities equal to or less than 65,000 BTU/h; warm air furnaces with capacities equal to or less than 225,000 BTU/h input; and boilers with capacities equal to or less than 300,000 BTU/h input. Mechanical equipment or systems not addressed in this subsection shall meet all applicable requirements found in Section 8.0 of the *DOE Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings* (10 CFR part 435, Subpart A).

5.4.1 *Performance Data.* Unitary air-conditioning, heat-pumps, furnaces, and boilers shall meet the requirements of 10 CFR part 430. Do not use unrated indoor coil and outdoor condensing unit combinations as part of the heating and/or cooling system.

5.4.2 *Cooling Equipment Selection Criteria.* Base cooling equipment selections on calculations that determine the sensible and latent cooling capacity for the following conditions:

5.4.2.1 Air cooled condensing unit operating at the summer design conditions, or water cooled condensing unit operating at the expected average water temperature;

5.4.2.2 Indoor fan operating at an appropriate flow rate, approximately 300 cfm per ton of sensible coil capacity; and

5.4.2.3 Indoor coil operating in a range of entering dry bulb and entering wet bulb temperatures that can be expected to occur at the summer design conditions.

5.4.3 *Minimum Equipment Efficiency.* Use furnaces, boilers, central air conditioners and heat pumps which meet the applicable energy conservation requirements of 10 CFR part 430.

5.4.4 *Heating System Characteristics*

5.4.4.1 *Wall Heaters.* Do not install recessed heaters on outside walls.

5.4.4.2 *Electric Baseboard Heaters.* Do not exceed 250 W/lin. ft of heater.

5.4.4.3 *Central Electric Furnace.* Divide the operation of electric furnaces greater than 6 kW into at least two stages.

5.4.4.4 *Bath Ceiling Units.* Provide units with any combination of heat, light, or exhaust with controls permitting separate operation of each function.

5.4.5 *Equipment Sizing Procedures.* Size heating and cooling loads in accordance with the procedures in the *1989 ASHRAE Handbook, Fundamentals.*

5.4.5.1 *Outdoor design conditions.* For the proposed building site, use the 97.5 percent design value for winter and 2.5 percent design value for summer from the *1989 ASHRAE Handbook, Fundamentals*, Chapter 24, Table 1. Where documentation exists, adjustments may be made to reflect local climates or local weather experience.

5.4.5.2 *Indoor design conditions.* Use a winter heating design temperature of 70°F dry bulb. If humidification is provided, use a maximum relative humidity of 30 percent. For cooling calculations, use a design temperature of 75°F dry bulb. Design for a maximum 50 percent relative humidity within the conditioned space.

5.4.5.3 *Infiltration/Ventilation.* Design for a combination of infiltration and outdoor ventilation air of not less than an average of 0.35 ach.

5.4.6 *Heating-Cooling Equipment Sizing*

5.4.6.1 *Fossil Fuel Heating Equipment.* Size heating equipment capacity at no more than 125 percent of the design heating load. Where the next available size exceeds this limitation or a larger size is required to provide the air flow rate for cooling, the next larger size may be used.

5.4.6.2 *Electric Resistance Heating Equipment.* Design the total installed wattage of baseboard units not to exceed 125 percent of the design heating load. Size electric furnaces, fan-coil units, and duct heaters within 3 kW of the design heating load.

5.4.6.3 *Cooling Equipment.* Select cooling equipment for a sensible capacity not more than 125 percent of the design sensible cooling load, or the closest available size provided by the manufacturer, and for a latent capacity not less than the calculated latent cooling load. Perform separate calculations for each zone.

5.4.6.4 *Zoned Central Cooling Equipment.* Size central unit capacity of multi-zoned equipment at no more than 125 percent of the peak block load.

5.4.6.5 *Heat Pumps.* Base heat pump sizing on the design cooling load, unless the refrigeration cycle heating capacity is less than the design heating load of the conditioned space at the design condition. In this case, size the refrigeration cycle heating capacity to provide the lowest possible balance point on heating without exceeding 125 percent of the cooling design load. Do

not exceed the supplementary plus refrigeration cycle heating capacity by over 125 percent of the calculated design heating load. The total of the installed emergency and supplementary heat shall not exceed 100 percent of the design heating load.

5.4.7 *Distribution Systems*

5.4.7.1 *Air Distribution Systems.* Use accepted engineering standards such as *ASHRAE Handbook, 1987 HVAC Systems and Applications Volume*, or other equivalent procedures governed by the following:

5.4.7.1.1 *System Design.* Calculate each room cfm based on the greater of the heating or sensible cooling load; determine duct size by the cfm requirements of each room, the available static pressure and the total equivalent length of the various duct runs; and use friction loss data that corresponds to the type of material used in the duct construction.

5.4.7.1.2 *Installation.* Construct, erect, and seal all duct work in accordance with either the Sheet Metal and Air Conditioning Contractors National Association (SMACNA) Heating and Air Conditioning Installation Standards; or the SMACNA Fibrous Glass Duct Construction Standards, 5th Edition, 1979; or the SMACNA/TIMA/ADC Standard on Flexible Duct, 1980.

5.4.7.1.3 *Balancing.* Provide a means for balancing the air distribution system. Adjustable supply air diffuser dampers are acceptable.

5.4.7.1.4 *Diffusers and Grilles.* Select diffusers and grilles according to *1989 ASHRAE Handbook, Fundamentals* and use only those rated for throw and pressure loss over the appropriate range of flow rate by the manufacturer.

5.4.7.1.5 *Insulation.* Insulate air ducts located outside the conditioned space to at least a thermal resistance of 6h-ft²-°F/BTU, exclusive of inside and outside air film resistances. Install a vapor retarder where it is not an integral outside layer of the insulation. Seal joints in the ducts and vapor retarder with foil backed, acrylic adhesive tape.

5.4.7.1.6 *Ducts in Exterior Envelope Assembly.* Place ducts located in exterior envelope assemblies inside the thermal insulation so as not to reduce the insulating value of the insulation. Insulate building assemblies which act as plenums (such as floors) as provided above for ducts.

5.4.7.2 *Hydronic Distribution Systems*

5.4.7.2.1 Size and design piping in accordance with recognized engineering standards such as the Hydronic Institute's publications, the Institute of Boiler and Radiator Manufacturers (I-B-R) *Installation Guide for Residential Hydronic Heating Systems No. 250*, or the *1985 ASHRAE Handbook, Fundamentals*, Chapter 34.

5.4.7.2.2 Install piping for space heating in accordance with recognized engineering guidelines and standards such as the I-B-R *Installation Guide for Residential Hydronic Heating Systems No. 200* and *Advanced Installation Guide for Hydronic Heating Systems No. 250.*

5.4.7.2.3 Insulate hydronic heating pipes located outside the conditioned space or within thermal envelope assemblies with pipe coverings having equivalent unit thermal resistance (R_{eq}) of 4 h-ft²-°F/BTU, R-4. Determine the thicknesses in accordance with Equation 5-1.

$$t = r_1\left[\exp\left(\frac{Req}{R_{per} * r_1}\right) - 1\right]$$

Equation 5-1

t = required thickness of insulation, inches

r_1 = pipe outside radius, inches

R_{eq} = required equivalent R-value of insulation = 4 hr-ft^2-F/BTU

R_{per} = R-value per inch of insulating material (flat)

5.4.7.2.4 Insulate HVAC chilled water piping, regardless of location, with R-4 material having a permeability of not greater than 0.2 grain/h-ft²-in.Hg per inch. Protect material not meeting this requirement with a vapor-retarding covering having a permeance of at least 0.01 grain/h-ft²-in.Hg.

5.4.8 *Ventilation.*

5.4.8.1 *Outside Air.* If the design infiltration calculations (see Section 5.4.5) indicate that the average infiltration rate is less than 0.35 ach, provide additional outside air by using an energy recovery device to increase the total outside air to 0.35 ach and with a flow rate not less than 50 cfm.

5.4.8.2 *Combustion Air.* Design fossil fueled, central type heating equipment not to take combustion air from conditioned spaces.

5.4.8.3 *Exhaust Air.* Provide intermittent mechanical exhaust to the outdoors for kitchens of at least 100 cfm and for baths of at least 50 cfm.

5.4.8.4 *Ventilation Equipment.* Use only exhaust fans, heat recovery ventilators and other ventilating equipment rated by the manufacturer for airflow performance and installed accordingly.

5.4.8.4.1 *Heat Recovery Ventilators.* Consider the use of heat recovery in ventilation systems.

5.4.8.4.2 *Dampers.* Provide outside air intakes and exhausts with automatic or gravity dampers that close when the system is not operating.

5.4.9 *Controls.* When two or more electric resistance heaters (including baseboard units and low density ceiling radiant systems) are installed in any one zone, they shall be controlled by a single thermostat.

5.4.9.1 *Temperature Control.* Provide each system or zone and each floor of a dwelling unit with a separate thermostat to regulate the temperature. Each thermostat shall be manually or automatically adjustable.

5.4.9.1.1 *Set Points.* Use thermostats permitting set points from 55 to 85°F and incapable of simultaneous operation of heating and cooling.

5.4.9.1.2 *Location of Controls.* Mount temperature controls on an interior partition in an area sealed at the bottom and top and thermally insulated from the effects of the outside environment.

5.4.9.1.3 *Electric Furnaces.* A furnace greater than 6 kW in capacity shall have at least two stages. Control the second stage by an outdoor thermostat having a range selection of—22 to 55°F or by the second stage of a two-stage indoor thermostat.

5.4.9.1.4 *Heat Pump Controls.* Use thermostats for heat pump heating systems that are specifically designed for heat pump setback control, permitting suppression of electric resistance elements during post-setback warm-up periods.

5.4.9.2 *Zoned System Control.* Where zoned cooling units are used in conjunction with zoned heating, provide controls to prevent simultaneous heating and cooling.

5.4.9.3 *Ventilation Control.* Provide each mechanical ventilator (supply and/or exhaust) with a readily accessible, dedicated adjustable device for shut-off or volume reduction.

5.4.9.4 *Humidity Control.* Provide a humidistat for spaces or zones equipped to add moisture to maintain specific relative humidities. Use a humidistat that can be set to prevent additional energy from being used to provide space relative humidity levels above 30 percent.

5.4.9.5 *Heat Pump Supplementary Heater.* For electric resistance heaters, provide a control to prevent heater operation when the outdoor temperature is above the heat pump balance point except during defrost. For fossil fuel, activate supplementary combustion or stored-energy heating when the outdoor temperature is below the heat pump balance point.

5.5 *Domestic Hot Water (DHW).* This subsection applies to residential-type service water heating equipment only. Service water heating equipment not addressed in this section, such as central systems, shall meet the requirements of Section 9.0, Table 9.3–1 of the *DOE Voluntary Performance Standards for New Commercial and Multi-Family High-Rise Residential Buildings* (10 CFR part 435, subpart A).

5.5.1 *Equipment Performance.* Non-solar domestic water heaters shall meet the requirements of 10 CFR part 430.

5.5.2 *Water Heaters, Storage Tanks, and Piping.* Insulate DHW storage tanks, other than combination residential domestic water heating equipment, to at least 12 h-ft²-°F/BTU. Insulate above ground piping for non-circulating systems to at least 2 h-ft²-°F/BTU when the length of pipe is greater than 15 ft from the heater to the service point. Insulate continuously circulating hot water piping to a minimum of 4 h-ft²-°F/BTU.

5.5.3 *Combustion Air.* Design fossil fueled systems so that combustion air is taken only from outside the conditioned spaces.

Section 6.0 Prescriptive Compliance Path

6.1 *General.* This section sets requirements for an applicant, such as a builder, designer, or homeowner, who selects the Prescriptive Compliance Path. Use these requirements in conjunction with the minimum requirements provided in Section 5.0. Do not use this section in conjunction with Section 7.0 (Point System Compliance Path) or Section 8.0 (Performance Compliance Path) except as otherwise specifically provided therein. They may be used instead of this section.

6.2 *Selecting the Prescriptive Package.*

6.2.1 *Location and Building Type.* Select the prescriptive compliance packages appropriate to the building site location and closest to the building type of the proposed design. The housing types include: (1) single-family detached housing including one story, two story, bi-level, split level, and other housing

constructed on a single dwelling unit per building lot basis; (2) multi-family low-rise residential buildings including garden apartments, townhouses, rowhouses, multi-plexes, and other forms of housing with one or more common surfaces; and (3) manufactured housing or structures, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation. If the proposed design does not categorically fit any of the building types, use the performance compliance method of Section 8.0.

6.2.2 *Component Requirements.* Select a package from one identified in 6.2.1 which the proposed design meets or exceeds.

6.3 *Compliance.* The proposed design must meet or exceed all of the component requirements of the selected package. If the proposed design does not meet or exceed all of the requirements, change the design to do so or use either the points compliance method of Section 7.0 or the performance compliance method of Section 8.0 to demonstrate compliance.

6.4 *Infiltration levels.* Prescriptive packages will specify normal or tight infiltration requirements.

6.4.1. A *normal infiltration package* shall comply with all requirements of paragraphs 5.3.2 and 5.3.3, including all subparagraphs, and shall comply, where applicable, with the air distribution duct sealing requirements of paragraph 5.4.7.1.2.

6.4.2 A *tight infiltration package* shall comply with paragraph 6.4.1 and the following:

6.4.2.1 Window leakage, as measured in accordance with paragraph 5.3.2, shall not exceed 0.28 cfm per foot of crack.

6.4.2.2 All means of access to attics, such as scuttle holes and pull-down staircases, shall be weatherstripped or gasketed.

6.4.2.3 All electrical outlets or switches, whether on exterior or interior walls, shall have gaskets installed under the cover plates.

6.4.2.4 A continuous air infiltration barrier shall be installed on walls and ceilings of the building's thermal envelope. All joints, overlaps, and penetrations of the air barrier shall be sealed. The barrier shall have a permeability rating of 4.0 or greater.

Section 7.0 Point System Compliance Path

7.1 *General.* This section sets requirements for an applicant, such as a builder, designer, or homeowner, who selects the Point System Compliance Path. Use the point system in conjunction with the minimum requirements in Section 5.0. Do not use the Prescriptive Path (Section 6.0) or the Performance Path (Section 8.0) in conjunction with this section except as otherwise specifically provided therein. Those compliance paths may be used instead of this section.

7.2 *Procedure to Develop the Points Compliance Path.*

7.2.1 Select the set of tables (generated according to Section 4.3.2) appropriate to the building site location and closest to the building type and equipment of the proposed design. From the selected tables, choose the appropriate multipliers for the proposed features of the proposed building design. Table 7–1 through 7–10 is a sample set of the forms used for computing the Target and Design Points. Target and Design cooling point calculations are required only if the dwelling unit is to be mechanically cooled using either a heat pump or direct expansion (DX) cooling system with central distribution.

7.2.2 *Point Computation.* Using the appropriate multipliers for each proposed feature, calculate the Target and Design Points, respectively, on the points compliance analysis forms. Combine the points for all end uses to obtain the Total Target Points and Total Design Points.

7.2.2.1 *Ceiling Insulation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Ceiling Insulation Target and Design points for Heating and Cooling, respectively.

Table 7-1 - Point calculation for ceiling insulation.

NOTE: References to Tables 5-X in Tables 7-1 through 7-10 refer to the generic point tables generated under 4.3.2 and illustrated in the ARES User's Guide (DOE/CE-0274).

Point Calculation - Ceiling Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Ceiling Area) x _____ (TARGET Htg. Mult. (Table 5-2)) = _____ /1000 = _____

Equation 7-1a

Cooling: _____ (Ceiling Area) x _____ (TARGET Clg. Mult. (Table 5-2)) = _____ /1000 = _____

Equation 7-1b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Ceiling Area) x _____ (DESIGN Htg. Mult. (Table 5-3)) = _____ /1000 = _____

Equation 7-1c

Cooling: _____ (Ceiling Area) x _____ (DESIGN Clg. Mult. (Table 5-3)) = _____ /1000 = _____

Equation 7-1d

7.2.2.2 *Wall Insulation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Wall Insulation Target and Design points for Heating and Cooling, respectively.

Table 7-2 - Point calculation for wall insulation.

Point Calculation - Wall Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Wall Area) x _____ (TARGET Htg. Mult. (Table 5-4)) = _____ /1000 = _____

Equation 7-2a

Cooling: _____ (Wall Area) x _____ (TARGET Clg. Mult. (Table 5-4)) = _____ /1000 = _____

Equation 7-2b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Wall Area) x _____ (DESIGN Htg. Mult. (Table 5-5)) = _____ /1000 = _____

Equation 7-2c

Cooling: _____ (Wall Area) x _____ (DESIGN Clg. Mult. (Table 5-5)) = _____ /1000 = _____

Equation 7-2d

7.2.2.3 *Floor/Foundation Insulation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Floor/Foundation Target and Design points for Heating and Cooling, respectively.

Table 7-3- Point Calculation for floor and foundation insulation.

Point Calculation - Floor/Foundation Insulation

TARGET HOME:

TARGET POINTS

Heating: _____ (Component Size[1]) x _____ (TARGET Htg. Mult. (Table 5-6)) = _____ /1000 = _____

Equation 7-3a

Cooling: _____ (Component Size[1]) x _____ (TARGET Clg. Mult. (Table 5-6)) = _____ /1000 = _____

Equation 7-3b

DESIGN HOME:

DESIGN POINTS

Heating: _____ (Component Size[1]) x _____ (DESIGN Htg. Mult. (Table 5-7)) = _____ /1000 = _____

Equation 7-3c

Cooling: _____ (Component Size[1]) x _____ (DESIGN Clg. Mult. (Table 5-7)) = _____ /1000 = _____

Equation 7-3d

[1] Enter the area in square feet of a floor over a crawlspace or unheated basement foundation. Enter the perimeter length in feet for slabs or heated basement foundations.

7.2.2.4 *Air Infiltration Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Air Infiltration Target and Design points for Heating and Cooling, respectively.

Table 7-4- Point calculation for air infiltration.

Point Calculation - Air Infiltration

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) × _____ (TARGET Htg. Mult. (Table 5-8)) = _____ /1000 = _____

Equation 7-4a

Cooling: _____ (Floor Area) × _____ (TARGET Clg. Mult. (Table 5-8)) = _____ /1000 = _____

Equation 7-4b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Floor Area) × _____ (DESIGN Htg. Mult. (Table 5-9)) = _____ /1000 = _____

Equation 7-4c

Cooling: _____ (Floor Area) × _____ (DESIGN Clg. Mult. (Table 5-9)) = _____ /1000 = _____

Equation 7-4d

7.2.2.5 *Fenestration Layers and Sash Material Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Fenestration Layers and Sash Material Target and Design points for Heating and Cooling, respectively.

Table 7-5- Point calculation for window layers and sash materials.

Point Calculation - Window Layers and Sash Material

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) x _____ (TARGET Htg. Mult. (Table 5-10)) = _____ /1000 = _____

Equation 7-5a

Cooling: _____ (Floor Area) x _____ (TARGET Clg. Mult. (Table 5-10)) = _____ /1000 = _____

Equation 7-5b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Window Area) x _____ (DESIGN Htg. Mult. (Table 5-11)) = _____ /1000 = _____

Equation 7-5c

Cooling: _____ (Window Area) x _____ (DESIGN Clg. Mult. (Table 5-11)) = _____ /1000 = _____

Equation 7-5d

7.2.2.6 *Glazing Area and Orientation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Glazing Area and Orientation Target and Design points for Heating and Cooling, respectively.

Table 7-6 - Point calculation for fenestration area and orientation.

TARGET Point Calculation - Fenestration Area and Orientation

TARGET HOME:

		TARGET POINTS
Heating:	_____ Floor Area	_____ (Table 5-12)
Cooling:	_____ Floor Area	_____ (Table 5-12)

DESIGN Point Calculation - Fenestration Area and Orientation

DESIGN HOME: HEATING CALCULATION

Orientation	Glazing Area	Energy Option Multiplier (Table 5-13)	Overhang Multiplier (Table 5-14)	Fenestration Factor (F)
North	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
East	_____ x	_____ x	_____ /100 =	_____
Southeast	_____ x	_____ x	_____ /100 =	_____
South	_____ x	_____ x	_____ /100 =	_____
Southwest	_____ x	_____ x	_____ /100 =	_____
West	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
				+
			Total HEATING Fenestration Factor (F)	_____
			DESIGN Points:	_____ (Table 5-15)

Equation 7-6a

DESIGN HOME: COOLING CALCULATION

Orientation	Glazing Area	Energy Option Multiplier (Table 5-13)	Overhang Multiplier (Table 5-14)	Fenestration Factor (F)
North	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
East	_____ x	_____ x	_____ /100 =	_____
Southeast	_____ x	_____ x	_____ /100 =	_____
South	_____ x	_____ x	_____ /100 =	_____
Southwest	_____ x	_____ x	_____ /100 =	_____
West	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
				+
			Total HEATING Fenestration Factor (F)	_____
			DESIGN Points:	_____ (Table 5-15)

Equation 7-6b

7.2.2.7 *Base Load Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Base Load Heating and Cooling Points.

Table 7-7- Point calculation for base load.

Point Calculation - Base Load

TOTAL POINTS

Heating: _____ (Floor Area) x _____ (Heating Multiplier (Table 5-16)) = _____ /1000 = _____

Equation 7-7a

Cooling: _____ (Floor Area) x _____ (Cooling Multiplier (Table 5-16)) = _____ /1000 = _____

Equation 7-7b

7.2.2.8 *HVAC Equipment and System Efficiency Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of HVAC System Target and Design points for Heating and Cooling, respectively.

Table 7-8— Point calculation for mechanical equipment.

Point Calculation - Mechanical Equipment

TARGET HOME: TARGET POINTS

Heating: _____ (Table 5-17)

Cooling: _____ (Table 5-17)

DESIGN HOME: DESIGN POINTS

Heating: _____ (Equipment Multiplier (Table 5-18)) + _____ (Efficiency Indicator) = _____

Equation 7-8a

Cooling: _____ (Equipment Multiplier (Table 5-18)) + _____ (Efficiency Indicator) = _____

Equation 7-8b

7.2.2.9 *Domestic Hot Water Point Calculation.* Use points selected under 7.2.1 in values for the DHW Target and Design Points.

Table 7-9—Point calculation for domestic water heating.

Point Calculation - Non-solar Domestic Water Heating

TARGET HOME:		TARGET POINTS
		(Table 5-19)
DESIGN HOME:		DESIGN POINTS
DHW (Table 5-20) +	Energy Factor =	

Equation 7-9

Point Calculation - Solar Domestic Water Heating

TARGET HOME:	TARGET POINTS
	(Table 5-21)
DESIGN HOME:	DESIGN POINTS
	(Table 5-21)

7.2.2.10 *Total Points.* Calculate the Total Target and Design points using Table 7–10. Compliance is demonstrated if the Total Design Points do not exceed the Total Target Points.

Table 7-10 — Point computation summary form.

Point Computation Summary Form

Component	Source Equation	TARGET Heating	TARGET Cooling	DESIGN Heating	DESIGN Cooling
Ceiling Insulation	7-1a - d	_____	_____	_____	_____
Wall Insulation	7-2a - d	_____	_____	_____	_____
Floor Insulation	7-3a - d	_____	_____	_____	_____
Air Infiltration	7-4a - d	_____	_____	_____	_____
Glazing Layers	7-5a - d	+ _____	+ _____	+ _____	+ _____
SUBTOTAL 1	Note (a)				
Glazing Orientation	7-6a - b	- _____	+ _____	- _____	+ _____
SUBTOTAL 2	Note (b)				
Base Points	7-7a - b	± _____	± _____	± _____	± _____

Notes for Table 7-10:

a) Sum the points in each column to obtain entries for the four SUBTOTAL 1 boxes.

b) Subtract the Glazing Layers Heating points and add Glazing Layers Cooling points to obtain entries for the four SUBTOTAL 2 boxes.

Table 7-10 — Point Computation Summary Form (continued).

SUBTOTAL 3	Note (c)		
HVAC Efficiency Heating Cooling	7-8a - b	x _____ x _____	x _____ x _____
TOTAL HEATING AND COOLING POINTS	Note (d)	+	+
TOTAL SPACE CONDITIONING POINTS	Note (e)		
Domestic Hot Water Points	7-9 & Table 5-21	+ _____	+ _____
TOTAL POINTS	Note (f)		

Notes for Table 7-10 (continued):

c) Sum the Base Points and SUBTOTAL 2 to obtain SUBTOTAL 3 entries. Note: Some Base Points may be negative. In this case, subtract them from SUBTOTAL 2.

d) Multiply Heating SUBTOTAL 3 by HVAC Heating Points to obtain TOTAL HEATING POINTS. Multiply Cooling SUBTOTAL 3 by HVAC Cooling Points to obtain TOTAL COOLING POINTS.

e) Sum TOTAL HEATING and TOTAL COOLING POINTS to obtain TOTAL SPACE CONDITIONING POINTS.

f) Sum TOTAL SPACE CONDITIONING POINTS and Domestic Hot Water Points to obtain TOTAL POINTS.

Section 8.0 Performance Compliance Path

8.1 *General.* This section sets requirements for an applicant, such as a builder, designer, or homeowner, who selects the Performance Compliance Path. Use these procedures in conjunction with the minimum requirements presented in Section 5.0. Except as otherwise provided in this section, do not use Section 6.0 (Prescriptive Compliance Path) or Section 7.0 (Point System Compliance Path).

8.1.1 *Compliance Procedure.* The procedure consists of calculating energy costs for the proposed or candidate design and comparing those with energy costs for a reference design with characteristics defined in this section. These costs are then converted to points and combined with those for domestic hot water to develop design points and target points. If the TOTAL POINTS for the proposed design *do not* exceed the TOTAL POINTS of the reference or target design, the candidate design complies with the standards.

8.2 *Design Assumptions.*

8.2.1 *General.* Consider conditioned floor space in dwelling units to be fully conditioned to maintain the specified thermostat set points (except for minor deviations consistent with good sizing

practice at thermostat setup/setback and peak load conditions) during the entire year. If equipment to supply full heating, cooling, or domestic hot water is not specified for the candidate design, assume that equipment meeting the minimum prescriptive requirements is installed.

8.2.2 *Candidate Design.* Take into account all qualities, details, and characteristics of the design that significantly affect energy use and energy cost. These may include construction, geometry, orientation, materials, equipment, and use of renewable energy sources. Include items for which minimum design requirements are specified in Section 5.0. Document minimum design requirements and all significant energy conservation features in construction documents.

8.2.2.1 *Design Points.* If multiple units of identical designs are planned, calculate design points for the candidate unit for one of the following conditions: (1) the Design Points of each specific dwelling unit, calculated based on its unique combination of design, orientation, site, and climate; (2) the highest Design Points for the Dwelling Unit Type for each orientation or closest cardinal orientation and site situation in which it is proposed to be built; or (3) the highest Design Points for the Dwelling Unit Type simulated in each of the four cardinal directions. Compliance by the third alternative demonstrates compliance of the candidate design, regardless of orientation.

8.2.2.2 Calculate Design Points separately for each single-family dwelling unit. For multi-family low-rise residential buildings, the Design Points may be calculated separately for each dwelling unit or may be calculated for the entire building.

8.2.3 *Reference Dwelling Unit.* Use the prescriptive compliance package, under Section 6.0, that represents the same generic dwelling type as the candidate design, for the reference unit. The three dwelling types are single-family dwelling, multi-family low-rise residential building, and manufactured (mobile home) dwelling. Use the prescriptive package envelope requirements for the reference unit with the same heating equipment type and same cooling equipment type as the candidate.

8.2.3.1 *Floor Area.* Use the same floor area as the candidate unit.

8.2.3.2 *Ceiling Area.* Use the same exposed ceiling area as the candidate unit. Use an exposed roof area that is horizontal, unventilated, of lightweight construction, and insulated to meet the roof conductance requirements of the prescriptive section for the candidate conditioning energy type.

8.2.3.3 *Wall Area.* Use the gross exterior wall area of the candidate with one-fourth of the area located on each cardinal orientation. Use the number, orientation, and area of non-glass doors of the candidate design.

8.2.3.4 *Glazing Area.* Use either the vertical glazed area of the candidate design (including skylights) or 12 percent of the conditioned floor area, whichever is less. Locate one-fourth vertically on each cardinal orientation.

8.2.3.5 *Construction.* Use light weight, standard frame construction.

8.2.3.6 *Floor and Foundation.* Use the candidate design constructions, fraction of floor area over conditioned space, unconditioned space, unconditioned basements, crawl spaces, and floor slabs. Insulate to the selected package requirements.

8.2.3.7 *Shading.* Use no external shading.

8.2.3.8 *Volume.* Calculate the volume as eight feet times the floor area.

8.3 *Standard Calculation Procedure for Space Conditioning Energy Use.* Taking into account the requirements of paragraph 8.2 of this section, and consistent with the calculation procedure in this section, estimate the average annual energy use for heating and cooling (in MBTU) for the candidate and reference designs, respectively.

8.3.1 *Internal Heat Gains.* Use equations 8–1 through 8–3 to calculate internal heat gains. Include internal heat gains from lights, people, and equipment. Distribute over the day according to the fractions in Table 8–1.

Total heat gains = Sensible heat gains + Latent heat gains

Equation 8–1

Sensible heat gains (BTU/day) = (floor area x 8.3) + 43,660

Equation 8–2

Latent heat gains (BTU/day) = 12,160

Equation 8–3

Table 8-1- Internal load (fraction of daily total)

Time of day	Multiple zones		Single zone
	Zone 1	Zone 2	
Mid - 1 am	0.0140	0.0063	0.0203
1 - 2 am	0.0140	0.0063	0.0203
2 - 3 am	0.0140	0.0063	0.0203
3 - 4 am	0.0140	0.0063	0.0203
4 - 5 am	0.0140	0.0063	0.0203
5 - 6 am	0.0140	0.0199	0.0339
6 - 7 am	0.0351	0.0075	0.0426
7 - 8 am	0.0315	0.0537	0.0852
8 - 9 am	0.0119	0.0379	0.0498
9 -10 am	0.0138	0.0166	0.0304
10 - 11 am	0.0138	0.0166	0.0304
11 - Noon	0.0138	0.0268	0.0406
Noon - 1 pm	0.0138	0.0166	0.0304
1 - 2 pm	0.0138	0.0116	0.0254
2 - 3 pm	0.0138	0.0126	0.0264
3 - 4 pm	0.0138	0.0126	0.0264
4 - 5 pm	0.0138	0.0248	0.0386
5 - 6 pm	0.0100	0.0316	0.0416
6 - 7 pm	0.0100	0.0346	0.0466
7 - 8 pm	0.0260	0.0440	0.0700
8 - 9 pm	0.0260	0.0440	0.0700
9 - 10 pm	0.0260	0.0471	0.0731
10 - 11 pm	0.0245	0.0486	0.0731
11 - Midnight	0.0300	0.0360	0.0660
Total	0.4254	0.5746	1.000

8.3.1.1 Where multiple zone space conditioning is modeled for the candidate unit only, use the hourly distribution shown for Zone 1 for bedrooms and bathrooms; use the hourly distribution shown for Zone 2 for all other conditioned rooms. Where single zone space conditioning is modeled, use the hourly distribution for single zone.

8.3.2 *Internal Thermal Mass.* Use an occupancy thermal mass (furniture and contents) of 4.5 lbs/ft² of floor area for both reference and candidate buildings. Use a structural mass of 1.5 lbs/ft² of floor area for the reference unit.

8.3.3 *Window Management.* Assume glazing is internally shaded by medium weight draperies in both the reference and candidate design even if no draperies are shown on the plan. Reduce the shading coefficient of the reference unit glazing 30 percent during the cooling season and 15 percent during the heating season, but assume no effect on window conductance. Higher performance shading and insulation systems may be modeled if supported by data and specified on the plans for the candidate design. To account for variations in occupant behavior, assume operable shading or insulation systems perform at 50 percent of their nominal decrease in shading coefficient or increase in insulation R-value when closed. If automatic motorized controls are installed, assume 100 percent of nominal performance.

8.3.4 *Natural Ventilation.* Assume that both candidate and reference dwelling units utilize natural ventilation for cooling whenever the outdoor air conditions allow the indoor conditions to be maintained at a relative humidity of 70 percent or less. Use identical ventilation control strategies in both reference and candidate designs. Natural ventilation may be used to reduce indoor air temperature below the cooling set point. For the reference unit, use a free vent area of 20 percent of the glazing area with vents uniformly distributed on each orientation. For the candidate design, use a free vent area of 50 percent of the operable sash area, to account for screens and other obstructions.

8.3.5 *Infiltration.* Use either a constant air change rate of 0.52 ach for both the candidate design and the reference design and meet the minimum infiltration requirements of Section 5.0; or calculate the Effective Leakage Area (ELA) per the *1989 ASHRAE Handbook, Fundamentals.* Use data from *ANSI/ASTM E/283–73, Standard Method of Test for Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors,* or *ASTM E/779–86, Determining Air Leakage Rate by Fan Pressurization,* where available. In no instance shall the ratio of ELA in square feet to the floor area in square feet of the candidate be less than 0.00023. For the reference unit, use the ratio of ELA in square feet to the floor area in square feet of the candidate of 0.00035. Calculate the energy loss from infiltration in both the reference and candidate design per the *1985 ASHRAE Handbook, Fundamentals* hourly calculation of the specific infiltration.

8.3.6 *HVAC Systems and Equipment.*

8.3.6.1 *Part Load and Outdoor Temperature.* Reflect the effects of part load and outdoor temperature.

8.3.6.2 *Multiple Energy Types.* If the candidate design uses more than one energy type for a single purpose, such as a combination of electricity and gas for space heating, then, in the reference dwelling unit, use the predominant energy source for that purpose and use the envelope requirements from the equipment type that represents the majority of that energy use. Use the same equipment types for heating and for cooling for both the candidate design and the reference dwelling unit, except use site solar with electric backup for space conditioning when included in the candidate design.

8.3.6.3 *Zones.* Use one thermal zone for the reference unit. Multiple thermal zones may be simulated in calculating the design energy cost of the candidate design if multi-zone automatic controls are specified.

8.3.6.4 *Equipment Sizing and Redundant Equipment.* Where equipment size affects energy consumption, use actual equipment sizes and types in the calculations. Size the equipment for the reference unit consistent with the sizing in the candidate design (Section 5.4.5). (The sizes need not be the same.) Redundant and/or emergency equipment need not be simulated if it is controlled so as not to be in use during normal operations.

8.3.6.5 *Thermostat Control and Equipment Size.* If the specified equipment in the candidate design is too small to meet the increased load from the required thermostat control strategy (see Section 8.2.1), increase its size to do so in the calculations. In no case shall the annual energy use of the candidate design be reduced by not fully conditioning its spaces. The number of hours that equipment does not meet the load in the candidate design must not exceed that of the reference dwelling unit.

8.3.6.6 *Single Zone Central System.* For central conditioning systems without zonal control, assume the entire living space consists of one thermostatically controlled zone. For houses with unconditioned basements, model the basement as a separate, unconditioned zone. Use the thermostat settings in Table 8–2 for the conditioned spaces in both the reference and candidate designs.

Table 8–2– Thermostat settings

Time of day	Thermostat setting (°F)					
	Multiple zones				Single zone	
	Zone 1		Zone 2			
Mid - 6am	60	78	60	85	60	78
6 - 9am	70	78	70	78	70	78
9 - 5pm	60	85	70	78	70	78
5 - 11pm	70	78	70	78	70	78
11 - Midnight	60	78	60	85	60	78

8.3.6.7 *Setbacks.* Use setbacks for heat pump heating only when the thermostat specified in the construction documents is specifically designed for heat pump setback control (i.e., controls the resistance elements independently of the refrigeration system) and uses a control strategy that reduces or eliminates the use of auxiliary heat for set up.

8.4 *Calculation Tool.* In performing calculation procedures under paragraph 8.3 of this section, use a calculation tool that is appropriate for the construction and configuration variables that are being analyzed. The calculation tool must be able to estimate the energy use of each specific construction parameter that deviates from the minimum prescribed values. The following classes of calculation methods may be used for the conditions as specified when the method complies with the subsequent criteria:

8.4.1 *Bin Calculation Method.* Use for envelope areas and thermal conductance, furnace, heat pumps, and cooling equipment efficiency.

8.4.1.1 *Criteria.* Only use methods compatible with ASHRAE Simplified Energy Calculation Procedure, ASHRAE Technical Committee 4.7 (TC 4.7) "Energy Calculations." Use ASHRAE WYEC bin weather data for the building location or a Bin method which is comparable to the TC 4.7 Method.

8.4.2 *Correlation Methods.* Use when construction variables to be analyzed are adequately quantified by the simulation program used to generate the data base, and the results are reliably re-created by the simplified algorithms. Do not use for analysis of weather or construction variables not covered by or outside the range of the data base.

8.4.2.1 *Criteria.* Only use when the methodology used to generate the data base, the correlation techniques, and their comparison to the basic data is well documented. (In correlation methods, heating and cooling loads for representative configurations are generated using a detailed hourly transient computer analysis model. The results are then translated into simplified algorithms that can be presented as tables, nomograms, or microcomputer programs).

8.4.3 *Transient Analysis Using Weather Sample.* Use to calculate any or all building variables.

8.4.3.1 *Criteria.* Use only if the method uses calculation techniques specified in the *1989 ASHRAE Handbook, Fundamentals*; the method uses transfer function, finite difference, or documented and approved techniques to calculate the transient responses of the dwelling; the method uses explicit equipment models to calculate equipment responses to varying weather conditions as recorded for consecutive intervals of one hour or less; it uses transcribed weather data for an entire year or it uses a minimum sample of at least 168 consecutive hours for each of the four seasons of the year, and it includes algorithms for computing shading and other solar effects as well as algorithms for computing the psychrometric properties of air systems when these are factors in measures being modeled. The weather data used must statistically represent the distribution of temperature and solar radiation in the long term weather records for the closest weather station having hourly records. ASHRAE Weather Year for Energy Calculations (WYEC) weather data is recommended for use with transient analysis programs. Weather data may be adjusted to compensate for microclimate differences between the building site and the weather station.

8.4.4 *Documentation.* For hand calculation analyses, include written documentation of the assumptions made as well as the calculations for each variable examined. For computer analyses, document the method used and provide supporting information showing that the conservation measures are accurately modeled by the program.

8.5 *Design and Target Energy Costs.* Using the results of the calculations in paragraph 8.3 of this section in Equations 8–6 and 8–7, calculate the design energy cost of the candidate and target energy cost reference designs, respectively.

8.5.1 *Energy Cost.* Use the unit cost of the energy type that is the current rate or price quoted by the usual supplier and available at the building site for the type and size of the candidate design. Use the same rate schedules for both the candidate design and the reference unit unless a different rate schedule is applicable to the candidate design due to energy conservation features. Use only in determining rates for those schedules where rate is based on amount of energy used in a given period. Include applicable demand charges, rate blocks, and time-of-use rates and calculate energy use for each time period specified in the rate schedule.

8.5.2 If the energy rate schedules are affected by total energy use, calculate occupant energy using Equations 8–4 and 8–5:

8.6 *Determining Compliance.* Using the results of the calculations in paragraph 8.5 of this section in Equations 8–6 through 8–9, calculate the Design Points for the candidate design and Target Points of the reference design, respectively. If the Design Points of the candidate do not exceed the Target Points of the reference, then the candidate design complies with the standards.

```
Daily Electrical Use = Af x 0.007
      (in kWh)         + No. of electric ranges x (1.7 + Af x 0.001)
                       + No. of electric dryers x (1.2 + Af x 0.001)
```

Equation 8-4

(Af = Floor Area in ft^2.)

```
Daily Gas Use = No. of gas ranges x (0.10 + Af x 0.0007)
 (in therms)    + No. of gas dryers x (0.08 + Af x 0.0005)
```

Equation 8-5

```
DEC = [Annual Energy Use for Heating (in MBtu)
      x Cost of Heating Energy (in $/MBtu)]
      + [Annual Energy Use for Cooling (in MBtu)
      x Cost of Cooling Energy (in $/MBtu)]
```

Equation 8-6

```
TEC = [Annual Energy Use for Heating (in MBtu)
      x Cost of Heating Energy (in $/MBtu)]
      + [Annual Energy Use for Cooling (in MBtu)
      x Cost of Cooling Energy (in $/MBtu)]
```

Equation 8-7

```
Design Points = 100 x DEC + DHW Points
```

Equation 8-8

```
Target Points = 100 x TEC + DHW Points
```

Equation 8-9

NOTE: *DHW Points* = points for domestic hot water generated using procedure in paragraph 7.2.2.9

Appendix A—Explanation of the Automated Residential Energy Standards (ARES) Computer Program

1.0 *General.* The ARES computer program was designed to assist building code officials to implement these standards by creating a customized version of the residential energy standards for their jurisdiction based on local climate and costs. The computer program uses climate data for a selected location along with economic variables, energy prices, and construction cost information to determine the most economical way to design an energy conserving house for the location. Once the computer program has determined the optimal house, it uses the yearly energy cost of that house as the target energy budget for the standards. ARES then produces the standards in one of three forms: (1) a set of prescriptive packages of required energy conservation measures, (2) a set of point requirements with a corresponding set of point values assigned to energy conservation measures, and (3) a reference house for the performance compliance path. These materials can also be used as compliance forms.

1.1 *ARES is not a Compliance Tool.* The ARES computer program *is not intended to be used by builders*, and *is not a tool for demonstrating compliance with the interim standards.* It is not possible to enter the dimensions or characteristics of a particular house in the program. However, the builder does use the printed output of ARES, the prescriptive packages and points system, along with forms included in the text of the standards, to determine compliance.

2.0 *Using ARES*

2.1 *Hardware Requirements.* ARES requires a micro-computer that runs on either the MS or PC DOS operating systems. It should run on any IBM compatible personal computer with at least 256K bytes of memory and two floppy disk drives or one floppy disk drive and a hard disk. The computer need not have a math co-processor to function. A printer is required to print out the prescriptive packages and the points system tables generated by ARES.

2.2 *Menu Driven Program.* ARES is a menu-driven computer program that

does not require the user to be computer literate. A menu is a set of options that appears on the computer screen. Menus allow the user to direct the process of the computer program without knowledge of how the program operates. It comes with an easy-to-use User's Manual that describes in detail the operation of the program.

2.3 *General Operation.* ARES requires information about the location, local energy costs and the housing and energy types for which the requirements are to be developed. It then determines the specifications for the prescriptive packages and points system compliance paths and the reference house for the performance compliance path solely on the basis of cost-benefit criteria.

2.4 *Creating a Standard.* The ARES program allows the user to create a customized local standard in six basic steps:

2.4.1 *Retrieve Saved Inputs.* This process retrieves from a disk information a user may have saved previously.

2.4.2 *Choose Location, Housing Type, and Foundation Types.* This process establishes the location of the housing and the housing type for which the standard will be set. The foundation types may be customized or the default types may be used.

2.4.3 *Choose Energy Types and Change Energy Prices.* This process permits customizing of the energy types and prices available in a locale. The inputs are needed to generate separate standards for the five different energy/equipment combinations.

2.4.4 *Select Minimum and Disallowed Levels for Energy Conservation Measures.* This process permits the use of defaults or allows the specification of more stringent minimum efficiency levels for energy conservation measures.

2.4.5 *Create Prescriptive Packages and Point System Tables.* This process automatically retrieves the climate data for a specific location and then performs the economic analysis to create the standards.

2.4.6 *Save Inputs.* This allows the user to save all of the inputs made in the earlier steps.

3.0 *Selection of Economic Variables and Cost Data.* ARES also allows for the selection of economic variables and energy conservation measure cost data. Select the appropriate inputs from Appendix B. For all other inputs, use default values and modify as appropriate. The default data incorporated in ARES are not location specific. They are a combination of average regional and national data (see Table A–1 below).

TABLE A–1.—ENERGY CONSERVATION COST DATA FOR THE U.S.

Region	States in region
National average	All
New England	CN, MA, ME, NH, RI, VT
Mid-Atlantic	DC, DE, MD, NJ, NY, PA
Mid-South	GA, NC, SC, VA, WV
Florida	FL
South Central	AL, AR, KY, LA, MS, OK, TN, TX
Central	IA, KS, MO, NB
North Central	IL, IN, MI, MN, ND, OH, SD, WI
Mountain	CO, NV, UT, WY
Southwest	AZ, NM
Pacific Southwest	AK, CA, HI
Pacific Northwest	ID, MT, OR, WA

3.1 *Inflation Rate.* The expected overall rate of inflation in consumer prices over the analysis period, as an annual percentage.

3.2 *Alternative Investment Rate.* The annual rate of return, expressed as a percent, that is available to a typical homeowner if another investment is made instead of energy conservation. ARES considers a particular energy conservation measure to be cost effective only if it results in enough energy savings to provide an economic return to the homeowner at least equal to what would be available from a typical interest-bearing investment.

3.3 *Mortgage Interest Rate.* The annual interest rate available to most home buyers. ARES uses this value to properly account for the total cost of buying energy conservation features. The number entered should correspond to the loan term and down payment.

3.4 *Points.* The percentage of the face value of a mortgage often added to buy down the interest rate. Because points are tax deductible and because they are part of closing costs, they are used by ARES. A typical average value over time for a location is entered as a percent of the loan amount.

3.5 *Down Payment.* The fraction of the full price of the home paid by most homeowners at the time of closing (with the balance to be paid over time). A typical down payment, that corresponds to the interest rate and loan term, required to obtain a home loan is entered as a percentage of the home's value.

3.6 *Loan Fee.* The typical non-tax deductible mortgage closing costs for a location, including appraisal fees, title searches, etc., expressed as a percentage of the loan amount.

3.7 *Term of Loan.* The typical loan term of home mortgages that correspond to the interest rate and down payment in a particular location.

3.8 *Property Tax Rate.* The average annual tax rate over time for a location expressed as a percentage of the initial cost. Adding conservation features to a home increases its value, which in turn increases tax-deductible property taxes.

3.9 *Income Tax Rate.* The typical value that includes both Federal and State taxes, expressed as a percentage. Because property taxes and interest on home loans are tax deductible, ARES requires the marginal income tax bracket of the median income homeowner to properly account for energy conservation measure costs.

3.10 *Local Cost Multiplier.* A multiplier which allows the user to change the assumed costs of purchasing and installing energy conservation options. It raises or lowers all the costs at once. This function is best used if the location tends to have higher overall prices than the regional average. The Location Cost Multiplier can also be used to adjust for overall inflation in construction costs over time.

3.11 *Energy Conservation Measure Cost Data.* The construction costs for each of the envelope, HVAC equipment, and domestic hot water equipment energy conservation options. The consistency of these costs relative to each other is very important—more important than the absolute accuracy of the data due to the way that ARES assigns priorities among measures. The changes that may be made are described in detail in the ARES User's Manual.

4.0 *Economic Optimization Methodology.* These standards rely on a minimum life-cycle cost analysis using estimated energy consumption data, construction cost data, climate data, and consumer financial parameters. The cash flows included in the assessment of these life-cycle costs are initial construction costs, operation and maintenance costs, energy costs, tax effects, and resale value of the home, all of which are discounted (accounting for the devaluation of money with time) to adjust for inflation and lost opportunity costs.

4.1 *Use of ARES Data Bases.* ARES accesses data bases of estimated residential energy consumption, construction costs, economic and financial parameters, and typical building characteristics. Using these data, ARES identifies for each locality the combination of energy conservation measures that results in the minimum overall life-cycle costs. The annual energy costs of the optimal house constitute the target energy costs required by the standards. ARES then provides prescriptive requirements (packages) that meet this energy budget and a point system designed to allow

evaluation of specific building designs against the prescriptive target.

4.2 *ARES Energy Data Base.* The energy data base contains annual heating and cooling loads for residential housing built to common levels of thermal integrity in 881 United States locations. The energy data are derived from parametric computer simulations of residential energy performance.

4.3 *ARES Cost Data Base.* The cost data base contains construction costs for common levels of ceiling insulation levels, wall insulation levels, crawl space insulation levels, basement insulation levels, window types, and HVAC equipment efficiencies. Cost data are included for the 12 regions of the United States shown in Table A–1.

Section 5.0 *Life Cycle Cost Optimization.* The life-cycle cost (LCC) calculations required by the draft interim standards reflect the value of energy conservation measures to a typical homeowner. ARES provides two methods to calculate the value: a default 7 year LCC method and an extended LCC method. Local jurisdictions may choose the most appropriate of these methods. The life-cycle cost is defined as the sum of the net present values of the following cash flows: (1) down payment on loan, (2) loan fees and other closing costs of loan, (3) up-front interest charges (points) on loan, (4) tax deductions on points, (5) mortgage payments over the period of analysis, (6) tax deductions on mortgage interest over the period of analysis, (7) space conditioning energy costs over the period of analysis, (8) non-fuel operation and maintenance costs over the period of analysis, and (9) resale value of home at the end of the period of analysis.

5.1 *Optimization Process.* ARES identifies the minimum life-cycle cost dwelling via an exhaustive search of all insulation levels, equipment efficiencies, and window types available in the cost data base. In concept, the energy and construction costs of dwellings built to every unique combination of conservation options are calculated and compared. The combination with the lowest overall life-cycle cost is used as the basis for the energy cost budget. However, there are several constraints applied during the optimization. First, the optimization assumes that the window area of the dwelling is equally distributed on the four cardinal orientations. Though this seldom matches the construction of a particular dwelling, it represents the average condition of large numbers of residences. Second, the optimal levels of ceiling insulation, wall insulation, windows, and equipment efficiencies are forced to be the same for all foundation types. This is accomplished by identifying a prevalent foundation type for each location and optimizing a prototypical dwelling with that foundation. Once the upper envelope conservation levels are established, the insulation levels for each additional foundation type are optimized assuming the same upper envelope is installed. Thus, each foundation type results in a unique energy cost budget.

5.2 *ARES Default Method.* The ARES default method assumes a 7-year period of home ownership. Mortgage payments and interest fractions (the portion of each mortgage payment attributable to interest) are based on common financial calculations and current economic parameters. The home's resale value is assumed to be identical to its initial cost in current dollars at the end of the 7-year period of analysis. Thus the home's real value is assumed to decline at the rate of inflation.

5.3 *Extended Life-Cycle Cost Method.* The Extended Life-Cycle Cost method is provided for locations where data show that the 7-year period of home ownership is inappropriate. This method differs from the default method only in the period of analysis, and related provisions for entering values for the resale value of the dwelling. These factors are then added to the calculation.

Section 6.0 *Compliance Alternatives.*

6.1 *Prescriptive Package Compliance.* ARES provides prescriptive packages of options that will meet the energy cost budget identified by the life-cycle cost optimization. One prescriptive package is created for each of the five (5) fuel/equipment combinations. Each package differs from the corresponding optimal combination of options due to a constraint applied in the program. The prescriptive packages assume that windows are equally distributed on the east and west faces of the house. This configuration is intended to approximate the worst possible orientation scenario, so that virtually any house, regardless of its window placement, would have energy performance at least as good. The purpose is to minimize the possibility that a house allowable under the prescriptive compliance path would not be allowable under the points compliance path. Given this constraint, ARES identifies the combination of options that meets the energy cost budget with the minimum construction cost. These are used with the minimum requirements to demonstrate compliance.

6.1.1 *Additional Prescriptive Packages.* In addition to the five standard prescriptive packages, the ARES user may develop additional packages to satisfy local conditions. This is accomplished by applying specific constraints, such as a fixed wall insulation level, then allowing ARES to identify the other components of the house that result in acceptable energy costs at a minimum construction cost. ARES will attempt to find the least expensive dwelling that meets the energy budget and uses the levels specified by the user. This allows users to create simple compliance approaches for technologies common to localities.

6.2 *Point System Compliance.* The point system data tables produced by ARES are used to evaluate those house designs that deviate from the prescriptive packages identified by the cost optimization process. It permits one to trade lower efficiency in one part of the design dwelling for higher efficiency in another part while maintaining equivalence in overall energy efficiency with the standards. Various levels of conservation options are assigned "points," which are tabulated in the compliance materials printed by the computer program. The points are directly proportional to the annual energy costs of the home, providing those designing a residential unit for compliance the capability to estimate the energy cost impacts of various construction options. Options which may be evaluated by the point system include various insulation levels, equipment efficiencies, and various window parameters including number of glazings, solar transmittance, and orientation. ARES automatically creates the point system when it creates the basic packages. The basic package and point system data can also be transferred to ACRES to provide an automated means of evaluating point system compliance.

6.3 *Performance Compliance.* One of the prescriptive packages printed by ARES, along with the minimum requirements, defines the reference dwelling unit against which the candidate design is compared in the performance compliance path. The interim standards allow construction of any residential building that has annual energy costs less than or equal to those of the optimal reference unit. An energy analysis is conducted for both the candidate (design) dwelling and the reference (target) dwelling using an appropriate energy calculation methodology.

7.0 *Interpreting the ARES Output.* The prescriptive packages are designed to be more stringent than the average dwelling would need to be if the point system was used to demonstrate compliance. For example, the "target"

energy budget is determined assuming equal window areas on all orientations (north, south, east, and west). However, the basic packages are created assuming a less efficient distribution with half of the window area on the east and half on the west. The inefficient window distribution in the basic packages causes ARES to select higher energy conservation measure efficiencies to make up the difference.

Appendix B - DOE Input Assumptions on Economic Parameters for ARES

TABLE B-1—DOE RECOMMENDED ECONOMIC PARAMETERS FOR ARES

Parameter	Input Value
Inflation rate	3.5%
Mortgage interest rate	9.18%
Points & loan fee	2.19%
Alternative investment rate.	8.4%–10.7% (nominal)
Federal income tax rate	28% (median) [1]
Down payment percentage.	24.4%
Loan term	30 years
Period of analysis	12 years
Fuel price escalation	See Table B-2

[1] Add relevant State and/or Local income tax rate.

TABLE B-2—RESIDENTIAL FUEL PRICE ESCALATION RATES (PERCENT PER YEAR IN REAL TERMS) FOR 1990–2020 BY U.S. CENSUS REGION

Fuel type	North east	North central	South	West
Electricity	0.4	0.1	0.4	0.7
Fuel oil	2.6	2.8	2.6	2.8
Natural gas	3.5	1.9	2.6	2.5

Appendix C—Radon Control Measures

1.0 *Purpose.* The purpose of this appendix is to recommend construction techniques for the control of the entry of radon into the home. The construction techniques apply to basement, slab-on-grade, and crawl space construction. They should not be viewed as independent, unrelated techniques, but rather should be used in combinations, particularly where it is necessary to achieve large reductions in radon concentrations.

1.1 *Background.* Radon is a naturally occurring gas resulting from the radioactive decay of radium, a common element in many soils. Radon gas decays into radioactive progeny that can build up to unacceptable concentrations in houses. Exposure to radon and its progeny has been linked to lung cancer in uranium miners. The potential health impact (if any) of exposures to radon at typical indoor levels (less than eight picocuries per liter) is unknown.

The principal sources of radon in buildings are: 1) soil and rock surrounding the building, 2) potable water, and 3) natural building materials used in the house. Soil is generally believed to be the most significant contributor to indoor radon, although radon-contaminated private well water can be a significant, but usually secondary source.

The control methods presented in this appendix address only the mitigation of radon entry from soil. The major entry paths for radon are cracks in the concrete slab, cracks between poured concrete and blocks, pores and cracks in concrete blocks, slab-footing joints, exposed soil (as in sumps), and seams around plumbing and electrical penetrations of the slab and below-grade walls.

2.0 *Determination of Need for Radon Control Measures.* The susceptibility of a building site to radon gas should be determined by one or more of the following methods:

2.1 Check with State and/or regional EPA offices for other radon problems in the area.

2.2 Check local soil characteristics for conditions favorable for radon gas formation/transport.

2.3 Conduct on-site soil testing for radon.

3.0 *Construction to Reduce Radon Concentration.* If the region inwhich the site is located is determined to have a potential radon problem, the design of the structure should incorporate radon resistant construction techniques such as described in *Radon Reduction Techniques for Detached Houses—Technical Guidance* (EPA/625/5–86/019).

Construction techniques applicable to the different foundation types are described below.

3.1 *Crawl Space Houses.*

3.1.1 *Ventilation.* Ventilation of the crawl space to transport the radon-borne soil gas that enters the crawl space from the soil to the outside should be provided through the use of standard foundation ventilation louvers. Uniform ventilation rates can be provided by the installation of fans.

3.1.2 *Sub-Floor Sealing.* In addition to the insulation, the underside of the house should be sealed with a polyethylene sheet to further reduce radon entry.

3.2 *Basement and Slab-on-Grade Building.*

3.2.1 *Sealing of Major Radon Sources.* All exposed earth within the building, such as drainage sump areas, should be capped with an impermeable covering and exhaust-ventilated through the roof to the outdoors. All cover seams/joints should be sealed.

3.2.2 *Sealing of Radon Entry Paths.* All cracks in the concrete slab and below-grade walls, slab-footing joints, wall and slab penetrations of plumbing, and electrical service should be sealed with a gas-proof, non-shrinking sealant.

3.2.3 *Foundation/Slab Construction.* The sub-slab area should be filled with a uniform layer of loose aggregate to a minimum depth of eight inches and covered with a thick, reservoir-grade plastic vapor barrier. Any joints or other penetrations of the barrier should be sealed. The vapor barrier should be covered with a layer of sand.

The foundation and slab should be poured as a single (monolithic) unit wherever possible. Specially designed plastic strips should be used to separate any slab junctions.

The recommended water content of the concrete should be used to minimize shrinkage and cracks. Steel reinforcing mesh is to be imbedded in the slab for more effective resistance to shrinkage and cracking.

3.2.4 *Below-Grade Wall Construction.* Solid (poured) concrete walls should be used in below-grade wall construction whenever possible. If block wall construction is necessary, concrete blocks should be used in preference to the more porous cinder blocks. Footings and block walls should also be adequately reinforced with steel to minimize cracking.

Hollow block walls should be capped or otherwise sealed at the wall top.

Interior and exterior block wall surfaces should be parged with appropriate vapor/water sealants.

3.2.5 *Sub-Slab De-Pressurization.* A method of sub-slab de-pressurization should be provided for transport of the radon-borne soil gas that originates in the soil beneath the building to the exterior before it enters the habitable portions of the building. This is accomplished by installing a network of perforated PVC drain pipe in the aggregate beneath the basement floor. The tile is connected to a vertical ventilation stack that extends from the floor slab through the roof. Passive mechanical ventilation is provided by a turbine ventilator. If additional constant ventilation rates are required, a fan should be installed in the exhaust duct.

3.2.6 *Drain Tile Soil Ventilation.* A considerable amount of radon-borne soil gas enters a house through openings in the vicinity of the footings. If the house is designed with a perimeter drain system that surrounds the house, it can

be used to draw radon away from these potential entry paths.

The drain tile ventilation system should consist of a water trap and riser(s) installed in the line to the soakaway, and an exhaust fan to provide the necessary suction on the tile system.

This approach is an alternative to the sub-floor de-pressurization technique described above.

4.0 *Post-Construction Requirements.*

4.1 *Indoor Radon Monitoring.* Monitoring for radon should be done during the first heating season, within 12 months of completion of the house. The monitoring period should follow standard indoor radon and radon decay product measurement protocols described in the EPA publication "Interim Indoor Radon and Radon Decay Product Measurement Protocols" (EPA 520/1–84–04, April 1986).

4.2 *Mitigation.* If the monitoring results exceed minimum levels (yet to be established), further specific mitigation measures should be implemented. The exact measures depend upon the actual radon results, the design of the building, and the radon mitigation measures already in effect.

Appendix D—Points Compliance Forms

Use the tables in this appendix to calculate the points when using Section 7.0.

Table D-1- Point calculation for ceiling insulation.

Point Calculation - Ceiling Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Ceiling Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-1a

Cooling: _____ (Ceiling Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-1b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Ceiling Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-1c

Cooling: _____ (Ceiling Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-1d

Table D-2- Point calculations for wall insulation.

Point Calculation - Wall Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Wall Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-2a

Cooling: _____ (Wall Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-2b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Wall Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-2c

Cooling: _____ (Wall Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-2d

Table D-3- Point calculation for floor and foundation insulation.

Point Calculation - Floor/Foundation Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Component Size[1]) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-3a

Cooling: _____ (Component Size[1]) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-3b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Component Size[1]) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-3c

Cooling: _____ (Component Size[1]) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-3d

[1] Enter the area in square feet for a floor over a crawlspace or unheated basement foundation. Enter the perimeter length in feet for a slab or heated basement foundation.

Table D-4- Point calculation for air infiltration.

Point Calculation - Air Infiltration

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-4a

Cooling: _____ (Floor Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-4b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Floor Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-4c

Cooling: _____ (Floor Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-4d

Table D-5- Point calculations for window layers and sash materials.

Point Calculation - Window Layers and Sash Materials

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-5a

Cooling: _____ (Floor Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-5b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Floor Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-5c

Cooling: _____ (Floor Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-5d

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Table D-6 - Point calculation for fenestration area and orientation.

Target Point Calculation - Fenestration Area and Orientation

TARGET HOME: TARGET POINTS

Heating: _____ / Floor Area = _____

Cooling: _____ / Floor Area = _____

Design Point Calculation - Fenestration Area and Orientaion

DESIGN HOME: HEATING CALCULATION

Orientation	Glazing Area		Energy Option Multiplier		Overhang Multiplier		Fenestration Factor (F)
North	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
East	_____	x	_____	=	_____/1000	=	_____
Southeast	_____	x	_____	=	_____/1000	=	_____
South	_____	x	_____	=	_____/1000	=	_____
Southwest	_____	x	_____	=	_____/1000	=	_____
West	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
						+	
					Total HEATING Fenestration Factor (F)		_____
					DESIGN Points		_____

Equation 7-6a

DESIGN HOME: COOLING CALCULATION

Orientation	Glazing Area		Energy Option Multiplier		Overhang Multiplier		Fenestration Factor (F)
North	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
East	_____	x	_____	=	_____/1000	=	_____
Southeast	_____	x	_____	=	_____/1000	=	_____
South	_____	x	_____	=	_____/1000	=	_____
Southwest	_____	x	_____	=	_____/1000	=	_____
West	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
						+	
					Total COOLING Fenestration Factor (F)		_____
					DESIGN Points		_____

Equation 7-6b

Table D-7- Point calculation for base load.

Point Calculation - Base load

TOTAL POINTS

Heating: _____ (Floor Area) x _____ (Heating Multiplier) = _____/1000 = _____

Equation 7-7a

Cooling: _____ (Floor Area) x _____ (Cooling Multiplier) = _____/1000 = _____

Equation 7-7b

Table D-8 — Point calculation for mechanical equipment.

Point Calculation - Mechanical Equipment

TARGET HOME: TARGET POINTS

Heating: = _____

Cooling: = _____

DESIGN HOME: DESIGN POINTS

Heating: _____ (Equipment Multiplier) ÷ _____ (Efficiency Indicator) = _____/1000 = _____

Equation 7-8a

Cooling: _____ (Equipment Multiplier) ÷ _____ (Efficiency Indicator) = _____/1000 = _____

Equation 7-8b

Table D-9—Point calculation for domestic water heating.

Point Calculation - Non-solar Domestic Water Heating

TARGET HOME: TARGET POINTS

_____

DESIGN HOME: DESIGN POINTS

$$\frac{\text{DHW points}}{\text{Energy Factor}} = \text{DESIGN POINTS}$$

Equation 7-9a

Point Calculation - Solar Domestic Water Heating

TARGET HOME: TARGET POINTS

_____

DESIGN HOME: DESIGN POINTS

_____

Equation 7-9b

Table D-10 — Point computation summary form.

Point Computation Summary Form

Component	Source Equation	TARGET Heating	TARGET Cooling	DESIGN Heating	DESIGN Cooling
Ceiling Insulation	7-1a - d	_____	_____	_____	_____
Wall Insulation	7-2a - d	_____	_____	_____	_____
Floor Insulation	7-3a - d	_____	_____	_____	_____
Air Infiltration	7-4a - d	_____	_____	_____	_____
Glazing Layers	7-5a - d	+ _____	+ _____	+ _____	+ _____
SUBTOTAL 1	Note (a)				
Glazing Orientation	7-6a - b	- _____	+ _____	- _____	+ _____
SUBTOTAL 2	Note (b)				
Base Points	7-7a - b	± _____	± _____	± _____	± _____

Notes for Table D-10:

a) Sum the points in each column to obtain entries for the four SUBTOTAL 1 boxes.

b) Subtract the Glazing Layers Heating points and add Glazing Layers Cooling points to obtain entries for the four SUBTOTAL 2 boxes.

Table D-10 — Point Computation Summary Form (continued).

SUBTOTAL 3	Note (c)		
HVAC Efficiency	7-8a - b		
Heating		x _____	x _____
Cooling		x _____	x _____
TOTAL HEATING AND COOLING POINTS	Note (d)	+	+
TOTAL SPACE CONDITIONING POINTS	Note (e)		
Domestic Hot Water Points	7-9a - b	+ _____	+ _____
TOTAL POINTS	Note (f)		

Notes for Table D-10 (continued):

c) Sum the Base Points and SUBTOTAL 2 to obtain SUBTOTAL 3 entries. Note: Some Base Points may be negative. In this case, subtract them from SUBTOTAL 2.

d) Multiply Heating SUBTOTAL 3 by HVAC Heating Points to obtain TOTAL HEATING POINTS. Multiply Cooling SUBTOTAL 3 by HVAC Cooling Points to obtain TOTAL COOLING POINTS.

e) Sum TOTAL HEATING and TOTAL COOLING POINTS to obtain TOTAL SPACE CONDITIONING POINTS.

f) Sum TOTAL SPACE CONDITIONING POINTS and Domestic Hot Water Points to obtain TOTAL POINTS.

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federal register

Monday
August 31, 1992

Part III

State Justice Institute

Proposed Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant guideline.

SUMMARY: This Guideline sets forth the proposed administrative, programmatic, and financial requirements attendant to Fiscal Year 1993 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until September 30, 1992.

ADDRESSES: Comments should be sent to: State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States.

Amount of Funds Available

At the time the Proposed Guideline was sent to the Federal Register, the level of the Institute's FY 1993 appropriation was uncertain. In H.R. 5678, the House of Representatives approved an appropriation of $13.55 million, the same amount appropriated for SJI in FY 1992. In S. 3026, however, the Senate proposed to appropriate $8.318 million for SJI, a 39% reduction from its FY 1992 level of funding.

The allocations made in certain areas of the Proposed Guideline, e.g., the reservation of up to $250,000 for a scholarship program (section II.B.2.b.v.), of up to $1,000,000 for "single jurisdiction" projects (section II.C.), and the reservation of up to $500,000 for a technical assistance grant program (section II.C.2.) are premised on the Institute receiving an appropriation of, or close to, $13.55 million. If the appropriation ultimately approved by Congress and the President is significantly below that level, the allocations may be changed in the Final Guideline, or in a subsequent notice. The number and scope of Special Interest categories also may need to be revised.

Funding Schedule

The FY 1993 concept paper deadline is December 2, 1992. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1993 funding cycle will be substantially similar to the FY 1992 cycle: the Board will meet in early March, 1993 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The exceptions to this schedule pertains to proposals to follow up on the National Conference on Substance Abuse and the Courts that was sponsored by the Institute in November, 1991 and the National Conference on Family Violence and the Courts that is scheduled for March 1993. In FY 1992, the Institute established a special deadline for concept papers seeking to implement the State plans developed at the conference. Eleven of the 33 State teams that attended the conference submitted concept papers by that deadline. Because the Board of Directors is aware of the continuing need for SJI support to assist the State courts in coping with their drug caseloads, the Institute is renewing its solicitation of proposals to implement post-conference activities. An October 9, 1992 concept paper deadline has been established for those proposals; the concept papers will be considered in November, 1992 and invited applications will be considered in March, 1993.

Subject to the availability of appropriations in FY 1994, the Institute also contemplates establishing an accelerated timetable for proposals seeking to implement State plans arising from the National Conference on Family Violence and the Courts to be held in April 1993. The deadline for mailing concept papers will be October 8, 1993. The papers will be considered by the Board at its meeting in November 1993. The remainder of the application schedule will be published in the Institute's Proposed Grant Guideline for FY 1994.

Types of Grants Available From the Institute

Since SJI's establishment in 1987, it has sought to develop a grant program that would be responsive to the most pressing needs of the State courts. As a result, the Institute has initiated several different types of grant programs. The types of grants available in FY 1993 and a reference to the appropriate Guideline section is provided below:

Project Grants

These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. As provided in section V., project grants ordinarily will not exceed ($200,000). Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in section VI.C., the Board may make a project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application.

Package Grants

This grant program is new in FY 1993. A package grant could provide funding to support two or more closely-related projects, e.g., projects addressing interrelated topics or requiring the services of the same key staff persons. A package grant could be awarded in an amount up to $750,000 for one year. See below and sections III.J., V.C. and D., VI.A. and VII.

Technical Assistance Grants

This grant program also is new in FY 1993. As described below and in section II.C.2, a State or local court may receive a grant of up to $30,000 for up to one year to support the provision of technical assistance to help the jurisdiction diagnose and respond to a specific problem.

In-State Grants

A grant of up to $20,000 for up to one year may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. See section II.B.2.b.i.(b).

Scholarships

As described more fully below and in section II.B.2.b.v., this program would support scholarships of up to $1,500 enabling judges and court managers to attend out-of-State education and training programs.

Renewal Grants

There are two types of renewal grants available from SJI: continuation grants (see sections III.H., V.C. and D., and IX.A.) and on-going support grants (see sections III.I., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts

with importantly needed services, programs, or products.

Special Interest Categories

The proposed Guideline contains 13 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Two categories in last year's Guideline have been eliminated ("Methods of Judicial Selection" and "Eliminating Unnecessary Barriers to the Courts") and four categories have been added ("Enhancing Court-Community Relations," "Application of Performance Based-Standards and Measures to the Courts," "Family Violence and the Courts," and "Use of Juries"; see section II.B.2.a.,i.,k. and l). Other special interest categories have been modified, and three new national conference topics are announced ("Court Management of Mass Tort Cases," "The Funding Crisis in the Courts," (section II.B.2.b.iv.) and "Increasing Public Confidence in the Courts" (section II.B.2.IV.a.).

Other significant changes in the FY 1993 Grant Guideline are noted below:

Package Grants

As noted above, the Board proposes to permit applicants to submit one concept paper (or application) for a "package" of related grants rather than to require the submission of separate proposals for each related component of the package. Annual package grants of up to $750,000 may be awarded to support projects that address interrelated topics or the core elements of a multifaceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. See sections III.J., V.C and D., VI.A.2.b. and 3.b., VII.A.3., VII.C and VII.D. Comment is specifically invited on these sections.

Technical Assistance Grants

In section II.C.2., the Guideline proposes to establish an accelerated grant program under which awards of up to $30,000 would be available to help State and local courts engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. Subject to the level of the Institute's appropriation for FY 1993, the Board has allocated up to $500,000 to support technical assistance grants next fiscal year.

Scholarships

In FY 1992, the Institute established an experimental $100,000 scholarship program to enable judges to attend out-of-State education and training programs. Pending resolution of the Institute's FY 1993 appropriation, the Board of Directors proposes to enlarge the funding pool to up to $250,000 and to make scholarships available to court personnel as well as judges. See section II.B.2.b.v.

With regard to both the scholarship and the technical assistance programs, the Board would be particularly interested in comments regarding the streamlined procedures described in the Guideline including the application requirements and the timing of reviews.

Renewal Funding

As in FY 1992, the Guideline establishes a target for renewal grants of no more than 25% of the amount available for grants in FY 1993. Unlike last year, the proposed FY 1993 Guideline divides the target allocation equally between continuation grants and on-going support grants. Accordingly, the Board intends to award no more than 12½% of available funds for continuation grants and no more than 12½% of available funds for on-going support grants. See section IX.

A number of technical changes have also been made in the Guideline including provisions relating to the accelerated consideration of proposals requesting less than $40,000 (see section VI.C.) and the contents of concept papers and applications (see sections VI.A. and VII. ., respectively).

Interagency Agreements

Persons interested in the SJI program should also be aware that SJI has entered into a number of Interagency Agreements (IAA's) that will support projects during Fiscal Year 1993. It is anticipated that the following IAA's will be operational in FY 1993:

Substance Abuse Case Management Education and Technical Assistance

Under this agreement, it is expected that SJI and the Bureau of Justice Assistance (BJA) of the Department of Justice will provide $150,000 each to The American University to identify and assess case management methods through which courts may process substance abuse cases fairly and effectively, develop and test a curriculum for judges and court managers based on these methods, and provide technical assistance that would help training participants improve their ability to handle these case.

Substance Abuse Treatment Training

The Office of Treatment Improvement (OTI) of the Department of Health and Human Services and SJI expect to support approximately six regional training programs for State judges and legislators on alcohol and drug treatment. OTI anticipates providing $1.5 million to support this program over a three-year period. SJI expects to provide an additional $300,000 over the same period to enhance and expand the program.

Substance Abuse Conference State Plan Implementation

SJI and BJA will be providing $208,000 ($108,000 from SJI; $100,000 from BJA) to the National Center for State Courts to provide technical assistance to the State teams that attended the November 1991 National Conference on Substance Abuse and the Courts.

Intermediate Sanctions Training and Technical Assistance

In FY 1993, SJI and the National Institute of Corrections will continue their jointly supported national training and technical assistance project, helping teams of judges and criminal justice system officials plan and develop intermediate sanctions in their jurisdictions. Since the project's inception in 1989, the project has enabled the Center for Effective Public Policy to train and assist teams from 24 jurisdictions. SJI has contributed $390,000 to the project since FY 1989; NIC, $590,000.

Pro Se Modifications of Child Support Awards

SJI and the Office of Child Support Enforcement of the Administration on Children and Families (HHS) are supporting a pilot project to develop, demonstrate, and evaluate effective techniques that courts can use in proceedings to review and modify child support orders involving litigants not represented by counsel. This $70,000 project is being conducted by the American Bar Association Center for Children and the Law in two counties in South Carolina. The Institute is contributing $35,000 to support this project; OCSC/AFC is providing $25,000 plus $10,000 in in-kind services.

Recommendations to Grant Writers

Over the past five years, Institute staff have reviewed approximately 2,000 concept papers and 1000 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential

applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What Is the Subject or Problem You Wish To Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What Do You Want To do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. How Will You Do it?

Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works?

Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It?

Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What Are the Specific Costs Involved?

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified clearly. The components of "Other" or "Miscellaneous" items should be specified in the budget narrative, and should not include set asides for undefined contingencies.

7. What, if any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources (such as the monetary value of time contributed by existing personnel or members of an advisory committee). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the Two Budget Forms Should Be Used?

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of

$30,000=$15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

• Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. May Grant Funds Be Used To Purchase Equipment?

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automated data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with section XI.H.4 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet is available from the Institute on computer diskette upon request.

13. Does the Budget Truly Reflect All Costs Required To Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations To Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 600 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due?

Submission of progress and financial status reports are required every calendar quarter, no later than January 30, April 30, July 30, and October 30 regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly report describing project activities between December 1 and December 31 will be due on January 30. A financial status report should be submitted even if funds have not been obligated or expended.

Progress reports are intended as a way of documenting what has happened over the past three months, providing an opportunity to resolve any questions before they become problems, and making any necessary changes in the project time schedule, budget allocations, etc. Thus, the project report should describe project activities, their relationship to the approved timeline, any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. Two copies of the progress report and attachments should be submitted to the Institute.

Additional quarterly program or financial reporting forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Renewal Grants or Package Grants?

Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary financial status report covering the entire package as well as separate financial reports for each of the projects in the package, identified by

number (e.g., SJI–93–15R–J–001–G1; SJI–93–15R–J–001–G2; SJI–93–15R–J–001–G3).

3. Why Is It Important To Address the Special Conditions That Are Attached to the Award Document?

In most instances, a list of special conditions are attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems with the conditions they may have. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI. and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute staff are always available to answer questions and provide assistance regarding these provisions.

4. What Is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

5. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day closeout period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

6. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Renewal Grants or Package Grants?

The basic procedures are the same for any grant.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment requests numbered accordingly. For example, if the last payment request under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the project number designated in the award document (e.g., SJI–93–15R–J–001–G1; SJI93–15R–J–001–G2; SJI–93–15R–J–001–G3). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R–J–001–G1 payment number 2; SJI–93–15R–J–001–G2 payment number 4; etc.).

7. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. However, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

8. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations or other significant changes become necessary, the grantee should contact the Institute's program monitor prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

9. What Is the 90-day Close-Out Period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

State Justice Institute Grant Guideline

The following Grant Guideline is proposed by the State Justice Institute for Fiscal Year 1993:

State Justice Institute Grant Guideline

Table of Contents

Summary

I. Background
II. Scope of the Program
III. Definitions
IV. Eligibility for Award
V. Types of Projects and Amounts of Awards
VI. Concept Paper Submission Requirements for New Projects
VII. Application Requirements for New Projects
VIII. Application Review Procedures
IX. Renewal Funding Procedures and Requirements
X. Compliance Requirements
XI. Financial Requirements
XII. Grant Adjustments
Appendix I Contact Persons for State Agencies Administering Institute Grants to State and Local Courts

Appendix II SJI Libraries, Designated Sites and Contacts
Appendix III Judicial Education Scholarship Application Forms
Appendix IV Concept Paper Preliminary Budget Form
Appendix V Certificate of State Approval Form

Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments; other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements. The Institute may also provide financial assistance in the form of interagency agreements with other grantors.

The Guideline is premised on the availability of approximately $10–12 million for grants, contracts, and cooperative agreements from FY 1993 appropriations. If, however, the Institute's FY 1993 appropriation is significantly reduced from the FY 1992 level of $13.55 million, the final Guideline may reflect different funding allocations and priorities.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1993 funds. The concept paper submission deadline for all but two funding categories is December 2, 1992. Concept papers to implement the plans developed at the November 1991 National Conference on Substance Abuse and the Courts must be mailed by October 9, 1992. Concept papers on projects that follow up on March 1993 National Conference on Family Violence and the Courts must be mailed by October 8, 1993. This Guideline applies to all concept papers and formal applications submitted for FY 1993 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1993, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement

plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1993, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Enhancing court-community relations. This category includes research, demonstration, evaluation and education projects designed to encourage greater public knowledge of and confidence in the courts, and to test innovative methods for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

The Board is particularly interested in supporting a national conference or national town meeting on improving public confidence in the justice system which would bring together judges, court managers, representatives of community and public interest groups, attorneys, criminal justice system officials, and legislative and executive branch leaders. The conference should be designed to enable those in attendance to exchange information and opinions about effective ways to improve (1) the public's knowledge about the courts, (2) the public's access to the courts, and (3) practices in the courts (and court-connected programs and services) in order to better respond to the public's concept of justice. The conference also should provide an opportunity to explore the court-related needs and interests of racial and ethnic minorities. The conference should be designed to produce a national agenda of priorities for improving the public's confidence in, access to, and use of the courts as well as preliminary action plans for implementing this agenda at the State and local levels. The format could be either a large single-site conference or multi-site gatherings linked through videoconferencing technology.

Examples of other possible projects include but are not limited to the development and testing of: innovative methods that trial or appellate courts may use in fairly and effectively handling cases involving pro se litigants; the innovative use of volunteers; and other innovative approaches to respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve. However, Institute funds may not be used to support legal representation of individuals in specific cases.

Projects previously funded by the Institute that address these issues include: Development of a manual for management of court interpretation services; codification and standardization of terms used in criminal proceedings into Spanish and preparation of glossaries of American legal terms in five Asian languages; development of materials in English and six other languages to assist pro se litigants in emergency proceedings before the probate and family courts; a

survey model to measure the impact of racial, ethnic and gender bias on trial court users; a study of differential usage patterns among minority and nonminority populations; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases; a study of model court-annexed day care systems; a study of methods to improve the retention and productivity of volunteer community mediators; the applicability of various dispute resolution procedures to different cultural groups; the development of comprehensive guidelines for courthouse facilities; preparation of public education materials and systems including a documentary series based on an actual appellate case and a videotape developed in ten languages for new immigrants to the United States; testing telephone-based systems for obtaining general court information and case-specific information; development of touchscreen computer systems, videotapes and other materials to assist litigants in domestic relations, small claims, landlord-tenant and other types of cases; and preparation of a curriculum for media representatives and judges on reporting on the courts and the law, and a curriculum for secondary school students on the importance and operation of the jury system.

b. Education and training for judges and other key court personnel.—i. *State initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) Development of state court education programs. Projects to assist development of State court education programs include, but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- The development of benchbooks and other educational materials;
- Seed money for innovative continuing education and career development programs, including seminars based on Institute-supported research, and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice;
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development); and
- The development of innovative faculty training programs.

(b) Adaptation of model curricula for in-State training. The Board is reserving up to $250,000 to provide support for in-State adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline.

Adaptation projects may include an in-State replication or State-specific modification of a model educational program, model curriculum, or course module developed with SJI funds by any other State or any national organization; an adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or an adaptation of a curriculum for use as part of a State judicial conference or State training program for judges and other court personnel. Only State or local courts may apply for in-State adaptation funding. Grants to support in-State adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

In-State implementation grants will be awarded on the basis of criteria including: The need for outside funding; the certainty of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. The Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter and geographic diversity in making implementation awards.

In lieu of concept papers and formal applications, applicants for in-State implementation grants may submit, at any time, a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

- *Project description.* What is the model curriculum or training program to be tested? Who developed it? How will it complement existing education and training programs? Who will the participants be and how will they be recruited? From where are they (e.g., from across the State, from a single local jurisdiction)? How many participants are anticipated and what limits, if any, will be placed on the number of participants? What are the proposed dates of the grant period?
- *Need for funding.* Why is this particular education program needed at the present time? Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Certainty of effective implementation.* What date has been set for presenting the program? What types of modifications in the length, format and content of the model curriculum are anticipated? Who will be responsible for adapting the model curriculum? Will the presentation of the program be evaluated, and if so, how and by whom?
- *Expressions of interest by the judges and/or court personnel.* A demonstration (e.g., by attaching letters of support) that the proposed program has the support of the judges, court managers, and judicial education personnel who are expected to attend.
- *Budget and matching State contribution.* An outline of the anticipated costs of the program, the amount of funding requested (including the basis for any travel), the amount of match to be contributed, and the sources of the match.

Letters of application may be submitted at any time. It is anticipated that they will be acted upon within 45 days of receipt. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in sections VI and VII or the requirements for renewal applications set forth in section IX.

ii. *National and regional training programs.* This category includes

support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

- Training programs or seminars on topics of interest and concern that transcend State lines;
- Multi-State or regional training programs sponsored by national organizations, nonprofit groups, State courts or universities; and
- Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel, including seminars based on Institute-supported research and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice.

iii. *Technical assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

The Institute is currently funding the following judicial education technical assistance projects: the Judicial Education Reference, Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and follow-up assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting national conferences on the topics listed below (Management of Mass Tort Litigation, and the Crisis in Funding for the Courts) and in paragraph II.B.2.a. (Enhancing Public Confidence in the Courts).

(a) National conference on court management of mass tort cases. The Institute, together with the Federal Judicial Center, are interested in supporting a national conference which would bring together State and Federal judges, court managers, attorneys, legal scholars, policy makers, and representatives of business and public interest groups to exchange ideas and information on the efficient, fair and effective judicial management of mass tort cases. Among the issues that may be addressed by the conference and in the materials prepared for it are:

- The impact of mass tort litigation on the courts, litigants, business, consumers and the general public;
- Judicial management of mass tort litigation;
- The use of special masters, alternative dispute resolution, and specialized juries;
- Methods of coordination and cooperation among State judges hearing similar or related cases;
- Methods for cooperation among State and Federal courts hearing similar or related cases;
- The impact on the parties, settlements and verdicts of various coordination and disposition methods; and
- Identifying and planning for the next areas of mass tort litigation that reach the State courts (e.g., repetitive stress injuries; illness caused by insecticides; illness caused by leakage of electro-magnetic energy).

The Institute is currently funding three projects that address these topics: a study of the judicial management of mass tort litigation in the State and Federal courts; the Chief Justices' Special Committee of State Judges on Asbestos Litigation; and an American Law Institute study of complex litigation.

(b) *National conference on the funding crisis in the courts.* The Institute is interested in supporting a national conference which would bring together teams of judges, State and local legislators, executive branch leaders, court managers, and attorneys, as well as legal, public administration and other scholars to share information about the current fiscal crisis faced by many State and local judicial officials, and identify effective approaches for securing adequate funding for the courts.

Among the issues that may be addressed by the conference and in the materials prepared for it are:

- The impact of inadequate funding on the ability of the courts to provide justice in civil, criminal, family, and probate cases;
- The effect of inadequate funding on the independence of the judiciary;
- The approaches States and local jurisdictions have used to attempt to provide adequate resources for the courts;
- The methods courts have used to assure the delivery of justice through effective management of limited resources;
- Techniques for determining the resource needs of the judicial branch;
- Approaches for enhancing interbranch cooperation and communication within the limits established by the separation of powers doctrine; and
- The appropriate use of the inherent powers of the courts as a means of obtaining adequate resources.

v. *Scholarships for judges and court personnel.* The Institute is reserving up to $250,000 to support a scholarship program for State court judges and court managers.

(a) Program description/scholarship amounts. The purposes of the Institute scholarship program are to strengthen court judicial and managerial leadership; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending out-of-State programs within the United States. A scholarship may cover the cost of tuition and transportation between the recipient's home and the site of the educational program up to a maximum total of $1,500 per scholarship. (Transportation expenses include coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Funds

to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

(b) Eligibility requirements. Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, and to full-time professional, State or local court personnel with management responsibilities. Senior judges, part-time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) Application procedures. Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

October 15, 1992, for programs beginning between December 1, 1992 and January 31, 1993;

November 1, 1992, for programs beginning between February 1 and May 31, 1993;

March 1, 1993, for programs beginning between June 1 and October 31, 1993; and

August 1, 1993, for programs beginning between November 1, 1993 and January 31, 1994.

No exceptions or extensions will be granted.

All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Certificate of Concurrence (Form S2, see Appendix). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor.

(d) Review procedures/selection criteria. The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 45 days after the relevant application deadline. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of the scholarship support awarded in any quarter to no more than $62,500 (in addition to scholarship funds that may not have been awarded in previous quarters).

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained.
- The absence of educational programs in the applicant's State addressing the particular topic;
- Whether the applicant intends to disseminate the knowledge gained by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level;
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The length of time since the applicant attended a non-mandatory judicial or court management education program;
- The State's need for the applicant to attend the specific educational program, as demonstrated by a description of current legal, procedural, administrative or other problems affecting the State's courts, enactment of new legislation, or other indications of need, in addition to submission of a signed Form S2;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts; and
- The balance of scholarships among educational programs.

(e) Responsibilities of scholarship recipients. In order to request the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Court financing and use of resources.* This category includes demonstration, evaluation, education, and research projects to improve methods for securing adequate resources for courts and efficiently managing those resources. Among possible topics that could be addressed under this category are: Preparation of a thorough "white paper" that documents the extent of the current crisis in court funding and its implications for the ability of the nation's courts to dispense justice and for the independence of the judiciary; the testing of innovative methods for enhancing interbranch communications; documentation and evaluation of effective techniques for managing court resources, services, and personnel and managing reductions of services and personnel levels in a court environment; examinations of the results, benefits and drawbacks of various methods of enhancing the stability and equity of court funding; and dissemination of information regarding these issues to the court community nationally.

In previous funding cycles, the Institute has supported projects that examined State court expenditures and staffing, and trial court reorganization; developed trial court financial management guides; documented methods for determining judgeship needs; and evaluated techniques for improving collection and administration of monetary penalties and restitution in criminal cases.

d. *Planning for the future of the courts.* The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

i. Development, implementation, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;

ii. Adaptation, implementation and evaluation of innovative management approaches established to complement, enhance or support use of a long-range strategic planning process.

iii. Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation of the planning process and/or related innovative management approaches; and

iv. Symposia or other educational programs dedicated to specific topics or issues (such as the impact of new technologies on established legal principles and traditional notions of due process, or the effect on the courts of changing demographics and other cultures' varied perceptions of justice, conflict, and dispute resolution procedures), identified during the 1990 Future and the Courts Conference or other futures activities.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1993. The Institute also has supported planning and futures projects including: Computer-assisted facilitation of court innovation; national and State-wide "future and the courts" conferences and training; a symposium on the future of the family court; an examination of the effect of demographic changes on cultural variations in the perceptions and expectations of justice; seminars exploring judicial decision-making in the 21st century; analysis and recommendations of alternative methods of involving expert witnesses in court proceedings; development of a curriculum and guidebook to assist courts to conduct visioning exercises; development of a curriculum and guide on trial court-based long-range planning; a Supreme Court-based critical issues planning commission; preparation of training and materials on developing issues regarding court-ordered health care; and training and assistance on conducting futures activities with limited resources.

e. *Improving communication and coordination among courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State trial and appellate courts and between State and Federal courts and State and Tribal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed are:

- Instances in which a litigant in a State civil, criminal or domestic relations case is subject to a Federal bankruptcy proceeding;
- Instances in which coordination of cases among different courts would significantly enhance the services provided to citizens;
- Instances in which a defendant has charges pending in both State and Federal court, in both State and Tribal court, or in more than one State court;
- Post-conviction challenges in capital cases; and
- Civil cases in which State and tribal courts have overlapping jurisdiction.

In previous funding cycles, grants have been awarded to support a study of States with coordinated family court systems, followed by a symposium for States which have or are interested in establishing family courts; a study of the nature and extent of cases that involve the same family within or across courts, and how best to integrate or coordinate these proceedings; the development of case management teams of court professionals to handle all cases pertaining to members of a family; development of guidelines for improving the process for preparing and transferring the record on appeal in a timely manner; and an evaluation of the effect of the California court coordination program. (See also paragraph II.B.2.m., The Relationship Between State and Federal Courts.)

f. *Application of technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Board is particularly interested in demonstrations and evaluations of innovative technologies and related issues presented at the Third National Conference on Court Technology held in March, 1992 in Dallas, Texas, including but not limited to: the evaluation of optical imaging as a tool for transferring information; preparation of staff for technological change, including innovative training on methods for avoiding or limiting work-related injuries; the development of policies and procedures regarding access by individuals, the media, commercial enterprises, and others to automated court records; and the use of videoconferencing and other innovative communications technologies to expedite the hearing and disposition of cases. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g., interactive computerized information systems to assist pro se litigants; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; the effects of telephone conferencing in interstate child support cases; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; the use of a microcomputer local area network to foster communication among judges and promote a team approach to handling caseloads; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges;

Demonstration and evaluation of records technology, e.g.: The effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving court records; an automated Statewide records management system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; development of an information retrieval and analysis system specifically designed for court management; detailed specifications for construction of an automated judicial education management system; testing of a document management system for small courts that uses imaging technology; evaluation of the use of automated teller machines for paying jurors; and development of a multi-user,

integrated State database of child abuse and neglect case files;

Court technology assistance services, e.g.: circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base and circulation of reports documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; a manual for court managers on practical issues relating to the use of computer-aided transcription; a handbook on appellate case management information systems; and an assessment of programs that allow public access to electronically stored court information.

Grants also support the development of a seminar for judges and court managers on the "courtroom of the future"; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow; and a national assessment of the efforts to develop and implement Statewide automation of trial courts.

g. *Reduction of litigation expense and delay.* This category includes projects to adapt, implement, and evaluate methods developed through research and demonstration projects supported by the Institute and other funders for fairly and effectively managing dockets and reducing the time from the filing of a case to its final disposition (including the pretrial, adjudicatory, post-trial, and appellate stages to the litigation process) and the reduction of the cost and complexity of litigation. This category does not include the provision of operational support for mediation or arbitration programs.

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects demonstrating the use of differentiated case management in trial and appellate courts, and examining the impact of innovative procedures for: screening civil cases, handling medical malpractice cases, and expediting appellate decisions.

The Institute has also supported development of a case management review process; studies of case processing in civil and domestic relations cases; the extent of case processing problems caused by discovery; methods for effectively managing motions practice in civil cases; and assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *Substance abuse.* This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to manage their overall caseloads fairly and efficiently.

The Board of Directors is particularly interested in funding innovative projects which establish coordinated efforts between local courts and treatment providers; enhance inter-branch communication regarding the effective disposition of cases involving substance abuse; and evaluate the effectiveness of various methods for treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively. The Institute will not fund projects focused on developing additional assessment tools for substance abusers, or providing support for basic court or treatment services.

Follow-up Projects to the November 1991 Substance Abuse and the Courts Conference

In order to further enhance the impact of the November, 1991 National Conference on Substance Abuse and the Courts and facilitate wider implementation of the developed State strategies developed at that Conference, the Board has established an accelerated schedule for considering projects to implement the action plans and strategies developed by the State teams that attended the National Conference. The deadline for mailing concept papers proposing such projects is October 9, 1992. The Board will review the concept papers at its November, 1992 meeting and invite applications for consideration at its March, 1993 meeting.

In previous funding cycles, the Institute has supported projects to evaluate the drug court procedures initiated by the Dade County, Florida, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; implement the plans developed by State teams at the National Conference on Substance Abuse and the Courts; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance also are supporting two technical assistance projects: One by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute expects to supplement a program supported by the Office for Treatment Improvement to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. *Application of performance-based standards and measures to the courts.* This category includes the development and testing of standards and techniques to enable trial and appellate court officials to conduct user-oriented evaluations of the quality of court services and to use measures of public satisfaction to improve court performance.

In previous funding cycles, the Institute has supported a test in four States of the feasibility of implementing the Trial Court Performance Standards; demonstration of a court-based consumer research and service development process; and adaptation of

"total quality management" principles to trial court operations.

j. *Responding to the court-related needs of elderly persons and persons with disabilities.* This category includes research, demonstration, education, and evaluation projects on issues related to the fair and effective handling of cases affecting persons who are elderly and persons who are physically or mentally disabled including those requiring long-term health care. The issues that may be addressed include but are not limited to:

- Development of materials and training programs on the Americans with Disabilities Act and its implementation in the State courts;
- Implementation of the recommendations of the National Conference on Court Related Needs of Elderly Persons and Persons with Disabilities held February, 1991 in Reno, Nevada;
- Development and testing of innovative techniques for improving the physical accessibility, convenience and security of court facilities and services to the public, including persons with mobility or communications impairments or other physical or mental disabilities;
- The assessment of the impact on State courts of the judicial review of administrative decisions made under Medicaid and similar State authorized health care programs and the use of "medical practice guidelines" as a new standard of care in health-related litigation; and
- The definition of the basis for determining health-care related issues such as: the competency of individuals; what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; the allocation of costs for routine and extraordinary health care; the appropriate use of experimental and other health care procedures; and other health-care related legal issues.

In previous funding cycles, the Institute has supported projects to: Examine, identify and test procedures to improve the monitoring and enforcement of guardianship orders; develop guidelines for judges in considering cases regarding the withdrawal of life-sustaining treatment, and national standards for probate courts; prepare benchbooks, handbooks, videotapes and training materials on guardianship, the Americans with Disabilities Act and AIDS. The Institute also supported a national conference on the court-related problems of elderly persons and persons with disabilities in February, 1991, and is supporting technical assistance and educational programs to disseminate and help implement the findings and recommendations of that conference.

k. *Improving the use of juries.* This category includes innovative research, demonstration, evaluation, and education projects to assist courts to improve juror comprehension, the structure of jury decisionmaking, public understanding of jury decisions, and attitudes toward jury service. Among the topics that could be addressed are:

Studies exploring whether juries limited to individuals with certain educational or professional backgrounds are better able to understand and dispense justice in litigation involving complex subject matter than randomly selected juries, or judges; and

Demonstrations and evaluations of the effect on outcome, deliberation time, and juror satisfaction of innovative procedures including:

- The use of "plain English" preliminary and final instructions;
- Permitting juries, during their deliberations, to use or have on-line access to videotaped testimony, computerized transcripts, copies or videotapes of the instructions, any computer simulations used in the trial, and other similar materials;
- Permitting jurors to discuss the case during trial;
- Permitting attorneys to present brief, periodic "mini-summaries" or explanations of their case; and
- Using structured verdict forms or special verdicts.

Education projects developing and testing curricula to:

- Inform judges and court staff how to manage activities such as juror notetaking, juror questioning, and other jury innovations in their courtrooms; enhance the jury experience, through effective juror orientation procedures and trial management; and encourage public participation on juries; and
- Bring together judges, lawyers, litigants, jurors, scholars and representatives of different segments of American society, (e.g., representatives of business and public interest groups) to discuss common perceptions and misperceptions about the jury system and identify ways to correct the system and/or the misperceptions;

Proposals for research submitted under this category should demonstrate the direct applicability of the results to court practices and procedures.

l. *Family violence and the courts.* This category is limited to State and local court projects to implement the action plans and strategies developed by the teams participating in the Institute-supported National Conference on Family Violence and the Courts to be held in San Francisco in March, 1993, and projects designed to assist teams in implementing their plans. Concept papers proposing such projects must be mailed by October 8, 1993. They will be considered by the Institute's Board of Directors at its meeting in November, 1993. Applications based on those concept papers will be considered by the Board at its meeting in March, 1994.

Support of projects based on those concept papers and applications will be subject to the availability of appropriations to the Institute for Fiscal Year 1994.

m. *The relationship between State and Federal courts.* This category includes education, research, demonstration, and evaluation projects designed to build upon the insights and information gained at the Institute-supported National Conference on State-Federal Judicial Relationships held in Orlando in April, 1992. Among the topics that could be addressed in education projects are the development and testing of curricula and other educational materials to:

- Enhance operation of State-Federal Judicial Councils;
- Assist judges and court staff in promoting the interests of the courts within the bounds of the applicable codes of conduct;
- Illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and
- Conduct regional conferences replicating the National Conference.

Among the topics that could be addressed in other types of projects are the development and testing of new approaches to:

- Coordinate bankruptcy cases with State litigation involving the individual or entity in bankruptcy including improved notice, certification and communication procedures and practices;
- Exchange information and coordinating calendars among State and Federal courts;
- Handle capital habeas corpus cases fairly and efficiently;
- Share jury pools, alternative dispute resolution programs and court services; and
- Facilitate certification of cases from Federal to State courts and explore the implications of certification of cases from State to Federal courts.

In previous funding cycles, the Institute has supported a national and a regional conference on State-Federal judicial relationships and the Chief Justices' Special Committee of State Judges on Asbestos Litigation. In

addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining the management of mass tort litigation in State and Federal courts, the impact on the State courts of diversity cases and cases brought under section 1983, the procedures used in Federal habeas corpus review of State court criminal cases, the factors that motivate litigants to select Federal or State courts and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction.

a. Description of the program. The Board will set aside up to $1,000,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. Application procedures. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. Description of the program. The Board will set aside up to $500,000 to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $125,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and the technical assistance must be completed within 12 months after the start-date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount. Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute three copies of a final report that explains how it intends to act on the consultant's recommendations as well as three copies of the consultant's written report.

b. *Review criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, and geographic diversity in awarding Technical Assistance grants.

c. *Application procedures.* In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. Need for funding. What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. Project description. What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the letter or be submitted under separate cover.

iii. Likelihood of implementation. What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of a court other than the applicant, agencies, funding bodies or organizations will be needed to adopt the changes recommended by the consultant and approved by the court, how have they/will they be involved in the review of the recommendations and development of the implementation plan?

iv. Budget and matching State contribution. A completed Form E, "Concept Paper Preliminary Budget" (see Appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated

under the Consultant/Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. Support for the project from the State supreme court or its designated agency or council. Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix V.) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1 and December 15 will be notified of the Board's decision by February 15; those submitting letters between December 16 and March 15 will be notified by May 15. Notification of the Board's decisions concerning letters received between March 16 and June 15 will be made by August 15; and applicants submitting letters between June 16 and September 30 will be notified by November 15. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in section II.B.2.b.iii.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantor Agency

The State Justice Institute.

E. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court.

F. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

G. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Match does not include project-related income such as tuition or payments for grant products, nor time of participants attending an education program.

H. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

I. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that pro-vides the State courts with services, programs or products for which there is a continuing important need.

J. Package Grant

A single grant that supports two or more closely related projects which logically should be viewed as a whole or would require substantial duplication of effort if administered separately. Closely related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

K. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts

and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. New grants (See chapters VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A.).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package Grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical Assistance grants (See section II.C.2.).
6. In-State Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

C. Maximum Size of Awards

1. Except as specified below concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that Fiscal Year.

3. Applications for package grants may request funding in amounts up to a total of $750,000.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for in-State curriculum adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for package grants, technical assistance grants and in-State curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects", or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper; and

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add Application Waiver Requested to the information on the cover page.

2. The Program Narrative

a. Concept papers proposing a single project. The program narrative of a concept paper describing a single project should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used. The narrative should describe:

i. Why this project is needed and how it will benefit State courts? If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

ii. What will be done if a grant is awarded? A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period.

iii. How the effects and quality of the project will be determined? A summary description of how the project will be evaluated, including the evaluation criteria.

iv. How others will find out about the project and be able to use the results? A

description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. Concept papers requesting a package grant covering more than one project. The program narrative of a concept paper requesting a package grant (see definition in section III.J.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. Concept papers proposing a single project. A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in appendix IV of this Guideline.

b. Concept papers requesting a package grant covering more than one project. A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each of these budgets must include the estimates and information specified on Form E included in appendix IV of this Guideline.

c. Concept papers requesting accelerated award of a grant of less than $40,000. Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2.a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1993 must be sent by first class or overnight mail or by courier no later than December 2, 1992, except for concept papers proposing to implement an action plan developed during the National Conference on Substance Abuse and the Courts which must be sent by October 9, 1992 (see Special Interest category (h), and concept papers proposing projects that follow-up on the National Conference on Family Violence and the Courts which must be sent by October 8, 1993 (see Special Interest category I.). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked Concept Paper and should be sent to: State Justice

Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. However, any such letter received prior to the meeting of the Board of Directors at which the paper is considered will be brought to the attention of the Board.

The Board will meet on November 19–22, 1992 to review the concept papers and invite applications to implement an action plan developed during the National Conference on Substance Abuse and the Courts. It will meet on March 4–7, 1993, to review concept papers and invite applications on other topics, and will meet on November 18–21, 1993, to consider concept papers to follow-up on the National Conference on Family Violence and the Courts.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below:

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas To Be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through

the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. Tasks and methods. A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. For education and training projects, the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. For technical assistance projects, the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package.

b. Evaluation. Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

i. The evaluation plan should be appropriate to the type of project proposed. For example, an evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e., whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicant should schedule all product preparation and distribution activities within the project period.

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

In most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix II). To facilitate their use, all videotaped products should be distributed in VHS format. For all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the summary or a brief abstract in ASCII must be submitted.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should

be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities) the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court or the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 13, 1992. A postmark or courier receipt will constitute evidence of the submission date. Please mark Application on all

application package envelopes and send to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. However, any letters received prior to the meeting of the Board of Directors at which the application is considered will be brought to the attention of the Board.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in sections VI. and VII. The Board of Directors anticipates allocating no more than 25% of available grant funds for FY 1993 for renewal grants. Of this amount, the Board anticipates allocating half to continuation grants and half to on-going support grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C.1 and 3, and V.D.1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its

intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. *Report of current project activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

c. *Evaluation findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks, methods, staff and grantee capability.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity. Include, in addition, the criteria and methods by which the proposed continuation project would be evaluated. A continuation application for a package grant must address these issues separately for each project included in the proposed package.

e. *Task schedule.* Present a detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole.

f. *Other sources of support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and budget narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A continuation application for a package grant must include a separate budget narrative for each project component.

4. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

For FY 1993, the Institute will consider only single projects for on-going support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports

to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of need for and benefits of the project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of court support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on current project activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Tasks, methods, staff and grantee capability.* Describe fully any changes in the tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. *Task schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other sources of support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

h. *Budget and budget narrative.* Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

4. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give

preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see I.G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly

Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

M. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

N. Suspension of Funding

After providing a recipient reasonable notice and opportuni-ty to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute.

Recipients also shall display the following disclaimer on all grant products:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

S. Distribution of Grant Products to State Libraries

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II).

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

V. Charges for Grant-Related Products/ Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Applicants should disclose the intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. See section XI.F. for requirements regarding project-related income.

W. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing financial operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording financial activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and budget review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for non-institute contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit requirement.* The State Supreme Court is required to ensure tha subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports

require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the award period. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. Income from the Sale of Grant Products

When grant funds fully cover the costs of producing and disseminating a limited number of copies of a product, the grantee may, with the written approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs. These costs must be reported on the quarterly financial status reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product reproduction and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for advance or reimbursement of funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant should be segregated by project and numbered accordingly. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of advance and reimbursement funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports, the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of minimum cash on hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or on-going support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package *and* separate reports for each project within the package.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, Cost Principles for State and Local Governments; A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and A–122, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved plan available.*—i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of indirect cost rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to

assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No approved plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in Section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial status report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final progress report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved

application or an approved adjustment thereto have been met; and, if any of the objectives have not been met explain the reasons therefor.

3. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.W.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be

allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin,

Executive Director.

Appendix I

List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990.
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547.
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 255–4359.
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295.
William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100.
State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585.
Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210.
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480.
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700.
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334, (404) 656–5171.
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968.
Dr. Irwin I. Tanaka, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605.
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246.
William M. Madden, Acting Director, Administrative Office of the Courts, 30 N. Michigan Avenue, Suite 2017, Chicago, Illinois 60602, (312) 793–3250.
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542.
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241.
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873.
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350.
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747.
State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792.
Ms. Deborah A. Unitus, Assistant State Court Administrator, Technical and Information Services, Administrative Office of the Courts, P.O. Box 431, Annapolis, Maryland 21404, (301) 974–2353.
Honorable John E. Fenton, Jr., Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787.
Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0131.
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474.
Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955.
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585.
Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621.
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643.
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076.
Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419.
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275.
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800.
Mr. Matthew T. Crosson, Chief Administrator of the Courts, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004.
Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (929) 733–7106/7107.
Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216.
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653.
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046.
Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000.
Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272.
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box

50447, Columbia, South Carolina 29250, (803) 758–2961.
Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885.
Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687.
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625.
Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371.
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281.
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248.
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North-Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455.
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780.
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145.
Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828.
Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581.

Appendix II

SJI Libraries, Designated Sites and Contacts (August 1992)

State: Alabama
Location: Supreme Court Library
Contact: Mr. Timothy Lewis, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347.

State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583.

State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035.

State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655.

State: California
Location: Administrative Office of the Courts
Contact: William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100.

State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720.

State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301.

State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480.

State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700.

State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.

State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 550, Atlanta, Georgia 30334, (404) 656–5171.

State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605.

State: Idaho
Location: AOC Judicial Education Library/State Law Library in Boise
Contact: Mr. Carl F. Bianchi, Administrative Director of the Courts for the State of Idaho, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–2246.

State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557.

State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capitol Building, Des Moines, Iowa 50319, (515) 281–8279.

State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257.

State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capitol, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848.

State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705.

State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600.

State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Blvd., Annapolis, Maryland 21401, (301) 974–3395.

State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148.

State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804.

State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084.

State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590.

State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660.

State: National
Location: JERITT Project/Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824.

State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska,

Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730.

State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747.

State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230.

State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850.

State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063.

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425.

State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229.

State: Northern Mariana Isl.
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275.

State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044.

State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.

State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440

State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfreado Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919

State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275

State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U. S. C. Law Center, University of South Carolina, Columbia, South Carolina 29208; (803) 777–5944

State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016

State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722

State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371

State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602, (802) 828–3278

State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455

State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146

State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145

State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424

State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509

Contact: American Judicature Society, Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900

Contact: National Center for State Courts, Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

Appendix III.—State Justice Institute Scholarship Application

Applicant Information

1. Applicant Name:

_____

(Last) (First) (M)

2. Position: _____

3. Name of Court: _____

4. Address: _____

Street/P.O. Box

_____

City State Zip Code

5. Telephone No. _____

6. Congressional District: _____

Program Information

7. Course Name: _____

8. Course Dates: _____

9. Course Provider: _____

10. Location Offered: _____

Estimated Expenses

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition $ _____

Transportation $ _____

(airfare, trainfare or if you plan to drive, the approximate distance and mileage rate)

Additional Information

Please answer the following questions:

1. Why do you need to take this course? How will your taking this course benefit either your court or the State's courts generally?

2. Is there any education or training currently available through your State on this topic?

3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course in your jurisdiction/State on the topic, provide in-service training, or otherwise disseminate what you have learned to colleagues.

4. How long have you served as a judge or court manager? How long do you anticipate serving as a judge or court manager where applicable, assuming reelection or reappointment?

5. How long has it been since you attended a non-mandatory continuing professional education program?

6. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

7. Please attach a current resume or professional summary.

Statement of Applicant's Commitment

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____

Signature

_____

Date

State Justice Institute

Judicial Education Scholarship Application

Certificate of Concurrence

I, _____.

Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled _____, prepared by _____,

Name of Applicant

and concur in its submission to the State Justice Institute. I certify that the applicant's participation in the program would benefit the State, that the applicant's absence to attend the program would not present an undue hardship to the court, and that receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____

Signature

_____

Name

_____

Title

_____

Date

Appendix IV—State Justice Institute

Concept Paper Preliminary Budget

Personnel $ _____

Fringe Benefits $ _____

Consultant/Contractual $ _____

Travel $ _____

Equipment $ _____

Supplies $ _____

Telephone $ _____

Postage $ _____

Printing/Photocopying $ _____

Audit $ _____

Other $ _____

Indirect Costs (%) $ _____

Project Total $ _____

Cash Match $ _____

In-Kind Match $ _____

Amount Requested From SJI $ _____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

Form B—(Instructions on reverse side)
Revised 3/1/92

Appendix V—State Justice Institute

Certificate of State Approval

The _____

Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled

_____

prepared by _____

Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____

Name of designated trial or appellate court or agency

to receive, administer and be accountable for all funds awarded by the Institute pursuant to the application.

_____

Signature

_____

Name

_____

Title

_____

Date

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in the Appendix to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in the Appendix to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

[FR Doc. 92-20670 Filed 8-28-92; 8:45 am]

BILLING CODE 6820-SC-M

Federal Register

Monday
August 31, 1992

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 397

Transportation of Hazardous Materials; Highway Routing; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC-92-6]

RIN 2125-AC80

Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing regulations regarding the highway routing of hazardous materials to implement the requirements of section 105 (b) and (c) of the Hazardous Materials Transportation Act of 1975 (HMTA) (Pub. L. 93-633) as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101-615). The regulations would include Federal standards and procedures which the States and Indian tribes would be required to follow if they establish, maintain, or enforce routing designations that: (1) Specifiy highway routes over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported within their jurisdictions, and/or (2) impose limitations or requirements with respect to highway routing of such hazardous materials. Also included are procedures relating to Federal preemption, waivers of preemption and resolution of disputes involving State or Indian tribe NRHM routing designations. States and Indian tribes would be required to furnish updated NRHM route information for publication by the FHWA. The existing motor carrier regulations with NRHM routing requirements would be incorporated into the proposed NRHM regulation, along with the new requirements which would require the motor carriers to comply with the NRHM routing designations of States and Indian tribes. Four public hearings are planned to provide an opportunity for interested parties to comment on this proposed regulation. A notice of public hearings with the dates, locations, times and other details for these hearings is published elsewhere in today's issue of the **Federal Register** under the title "Transportation of Hazardous Materials; Highway Routing."

DATES: Comments must be received on or before October 30, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-92-6, room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Commenters may, in addition to submitting "hard copies" of their comments, also submit a floppy disk in standard or high density format containing files compatible with word processing programs such as WordPerfect, Wordstar, or Microsoft "Word" for IBM systems; or WordPerfect or Microsoft Word for MacIntosh. The disks should be clearly labeled with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]).

All comments received will be available for examination at the above address between 8:30 a.m. and 3 p.m., e.t., Monday through Friday, except for legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Henry W. Sandhusen, Traffic Control Division (HHS-32), Office of Highway Safety, (202) 366-2218; Mr. Raymond Cuprill or Mr. Eric Kuwana, Office of Chief Counsel (HCC-20), (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

All sectors of the economy and all communities in the nation are dependent on the transportation of hazardous materials. It is estimated that four billion tons of regulated hazardous materials are transported annually and that approximately 500,000 movements of hazardous materials occur each day.

Despite an excellent safety record, the transportation of hazardous materials continues to be of concern to Congress, the public, and to Federal, State and local officials. Several States, including Colorado and California, as well as some regional and local governments have taken action to designate highway routes and/or impose route restrictions or limitations affecting the highway transportation of certain hazardous materials. While these localized routing designations are intended to improve safety, the proliferation of uncoordinated State and local routing designations could impede the free flow of commerce, have little or no demonstrable positive effect on public safety, and result in the exportation of risk from one jurisdiction to other jurisdictions. As a result of these concerns, section 105(b) of the Hazardous Materials Transportation Act of 1975 (HMTA) (Pub. L. 93-633, 88 Stat. 2156), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101-615, 104 Stat. 3244), requires the Secretary of Transportation (Secretary) to establish additional Federal regulations for the highway routing of hazardous materials. Also, section 105(c) of the HMTA, as amended by the HMTUSA, requires the Secretary to publish a list of hazardous materials highway route designations.

The Department of Transportation (DOT) currently has in effect two hazardous materials highway routing regulations (49 CFR 177.825, and 49 CFR 397.9) issued pursuant to the authority granted by the HMTA. Another routing related regulation is 49 CFR 177.810 which covers regulation of hazardous materials transported through urban tunnels used for mass transit. To assist State and local governments in the development of routes, the DOT published "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" (latest edition DOT/RSPA/OHMT-89/01 dated January 1989) and "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" (latest edition DOT/RSPA/OHMT-89-2 dated July 1989). The guidelines were originally published in 1981 by the Research and Special Programs Administration (RSPA) and in 1980 by the FHWA, respectively. They have been used by a number of jurisdictions to develop hazardous materials transportation routes. The latest editions of the guidelines are available for review in the docket or may be requested from the FHWA Traffic Control Division contact person listed in this preamble under the heading "For Further Information Contact."

Currently, motor carriers must select routes for transporting placarded radioactive materials in accordance with 49 CFR 177.825, which requires them to consider information such as accident rates, transit time, population density, time of day, and day of week during which transportation will occur. Additionally, for "highway route controlled quantity" (HRCQ) shipments of radioactive materials (e.g., spent nuclear fuel), motor carriers must use "preferred routes" which include most Interstate highways and some State-designated highways.

The DOT concluded that the limited access Interstate Highway System, generally, would provide safe routing for

HRCQ shipments based on available risk assessments and the extensive comments received in response to its rulemaking in Docket HM–164. In developing 49 CFR 177.825, the DOT recognized the significant concerns and interests that State, regional, and local governments have in the highway routing of radioactive materials and the important role which their actions and knowledge of local conditions can have in reaching effective routing decisions. States are required to consult and coordinate with affected local jurisdictions and other affected States to ensure consideration of impacts and continuity of designated routes. The States are given considerable latitude to carry out their highway routing functions. DOT's nearly ten years of experience with the highway routing requirements for HRCQ shipments of radioactive materials generally have been successful. This, however, may be because the current number of such shipments is very small, and most of the shipments are of a long-haul, interstate nature.

For highway transportation of other hazardous materials, a generic routing rule (49 CFR 397.9) has been in effect for more than 20 years. This regulation requires that, unless there is no practicable alternative, motor vehicles must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, or through tunnels, narrow streets, or alleys. The operating convenience of the carrier is not a basis for deciding whether it is practicable to operate a motor vehicle in accordance with this requirement. Although 49 CFR 397.9 attempts to embody a "common-sense" approach to the routing of hazardous materials, the section is difficult to enforce because it is so broad and general in nature.

Another regulation, 49 CFR 177.810, states that "Except as regards radioactive materials, nothing in 49 CFR parts 170–189 shall be construed as to nullify or supersede regulations established and published under authority of a State or municipal ordinance regarding the kind, character or quantity of any hazardous material permitted by such regulation to be transported through urban tunnels used for mass transportation." With regard to routing of hazardous materials, 49 CFR 177.810 does not permit exceptions to 49 CFR 177.825 which pertains to radioactive hazardous material (RAM) or to 49 CFR part 397 which pertains of all hazardous materials.

On April 7, 1988, under Docket HM–203 (53 FR 11618), the Research and Special Programs Administration (RSPA) published an advance notice of proposed rulemaking (ANPRM) relating to the transportation safety aspects of the highway routing of placarded non-radioactive hazardous materials (NRHM). The RSPA notice was issued to consider the extent to which the DOT needed to exercise its rulemaking authority regarding NRHM, to ensure that State and local hazardous materials routing decisions were consistent, cost-effective and conducive to the public safety. It was designed to obtain information regarding the routing decisions being made by carriers, shippers and State and local governments, and the effects of their routing actions. It recognized the significant role of State and local governments in making highway routing decisions, and the fact that the Federal government lacks their specific knowledge concerning local highways, land use patterns, highway geometry, and the emergency response capabilities of their jurisdictions. RSPA held public hearings which generated approximately 400 pages of transcript material. In addition, 82 written comments were received in response to the ANPRM. The transcript and comments are available for review in the FHWA docket.

The ANPRM did not propose any specific action but presented three possible alternatives to the existing routing requirements to illustrate the range of possible Federal regulatory approaches that might be used. Briefly, these alternatives were: (A) Require hazardous materials carriers to comply with a set of routing standards and an analytic process similar to that required for HRCQ shipments of radioactive materials; (B) Require shippers and carriers of hazardous materials to conduct risk analyses of highway routes in accordance with federally prescribed procedures and to select only those routes which had the lower level of risk; and (C) Require each motor carrier of certain extremely hazardous materials to be licensed for each hazardous materials route. Implicit among these was the alternative of retaining the existing regulations for routing of hazardous materials (e.g., 49 CFR 397.9) and other regulations having routing implications.

Most of the comments received in response to the ANPRM were submitted by shippers (31), carriers (7), and their affiliated trade associations (17). Comments represented two fairly distinct viewpoints on the need for additional routing standards for hazardous materials.

Commenters in Favor of Enhanced Routing Standards

This group made the following major points: (1) There is a need for consistent Federal guidelines and criteria for the highway routing of hazardous materials; (2) the absence of such guidelines and criteria has led to the development of conflicting and uncoordinated routing requirements at the State and local level; and (3) of the alternatives presented in the ANPRM, an alternative providing similar regulatory requirements to those of 49 CFR 177.825 would best delineate the appropriate roles of the Federal, State and local governments. This would include establishment of a State routing agency, through which local governments would act in designating routes for NRHM. There were differences among the commenters favoring enhanced routing standards on a range of issues, including which hazardous materials ought to be subject to enhanced routing controls.

Commenters Opposed to Enhanced Routing Standards

This group of commenters was essentially of the view that the current routing rule for hazardous materials, 49 CFR 397.9, has worked reasonably well during the many years it has been in effect and should be changed only if it can be shown that such change would significantly improve public safety. Further, despite the generally successful experience with the routing standards for HRCQ shipments of radioactive materials, these commenters were of the view that it would be a mistake to assume that equal success could be achieved by establishing a similar routing regulatory system for the more than 30,000 hazardous materials in transportation. These commenters noted the sharp contrast between the annual totals of less than 300 shipments of radioactive materials subject to the routing requirements of 49 CFR 177.825 and the more than 183 million shipments of hazardous materials. They contended that while the shipment of HRCQ materials is usually of a long-haul, interstate nature, the majority of hazardous materials shipments are intrastate, regional, and local; therefore, anything more elaborate than a very general routing rule, such as embodied in 49 CFR 397.9, could result in an extremely intricate and burdensome system of routing standards. They argued that such a system also would be essentially unenforceable and would not enhance public safety. The complexity of hazardous materials transportation patterns and related delivery schedules,

and the vast number of origins and destinations, they claimed, defy anything other than a very general routing rule.

Comments From State Governments and Political Subdivisions

Comments about the RSPA ANPRM were received from only ten States, and eleven regional and local political subdivisions, despite the fact that the ANPRM stressed the important role that State and local governments have in making effective routing decisions. Of the ten State agencies that did respond to the advance notice, several favored the adoption of a Federal regulatory framework similar to that used for the routing of radioactive materials, i.e., alternative A described above. These commenters, however, asserted that routing standards to be established under this framework should focus exclusively on materials poisonous by inhalation or on other extremely hazardous materials. The majority of commenters from State and local government agencies contended that the routing standards as exemplified by 49 CFR 397.9 are adequate and that much more rigorous and convincing evidence is required before any changes should be made to these standards. One State declared that the "proposed options for additional routing regulations impose unnecessary burdens on government and commerce without a demonstrable increase in safety." Another stated that, as far as the establishment of routing criteria, anhydrous ammonia alone "would pose a virtually impossible routing problem in an agricultural state." One county suggested that any changes in the current routing standards, as represented by the options discussed in the ANPRM, "could easily become an administrative nightmare accompanied by an avalanche of paperwork," and that "gasoline, while obviously quite hazardous, is present in such a ubiquitous manner that it is difficult to conceive the practicality or possibility of regulating all necessary routes." Another State response was to "emphasize that any Federal activities or proposal should be published in the form of guidelines or recommendations so each State can provide for its population based on (its) unique characteristics."

None of these commenters addressed the dilemma posed by having more than 30,000 governmental jurisdictions who may attempt to impose their own routing rules and restrictions on the transportation of hazardous materials.

The State of Colorado's Statewide Hazardous Materials Routing System

The most extensive comments on the issues associated with routing hazardous materials were provided by the State of Colorado. Because Colorado has had in-depth experience in implementing a statewide routing network for hazardous materials, its comments and the nature of the statewide routing system it has adopted are discussed at length.

In July 1987, the State General Assembly passed the Hazardous Materials Transportation Act of 1987. This Act authorized, among other things, the designation of routes for the transportation of hazardous materials other than shipments of HRCQ radioactive materials. The Colorado State Patrol was delegated the responsibility for developing and implementing a statewide hazardous materials highway routing system.

In consultation with local governments and the State Highway Department, the Colorado State patrol instituted the process of designating a statewide hazardous materials highway network. As part of this process, it analyzed the risks associated with its 9,198-mile State highway system, in terms of traffic volume, accident rates, population, and other factors and employed the Interstate Highway System in Colorado as the core component of the network.

In conducting its statewide analysis of routing alternatives, Colorado closely followed the aforementioned DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" to develop hazardous materials transportation routes.

In developing its hazardous materials highway system, Colorado conducted a study to determine the characteristics of hazardous materials transportation patterns within the State. It was found that about 9 percent of all truck trips within the State involved hazardous materials, and that only 3 percent of all hazardous materials trips were passing through the State. In other words, the transportation of hazardous materials occurs mainly to serve Colorado residents and businesses.

The study also revealed that the three most commonly transported classes of hazardous materials in Colorado, comprising 92 percent of all hazardous materials trips, are flammable liquids (such as gasoline, crude oil, paint and methanol), flammable gases (such as liquefied petroleum gas and acetylene) and combustible liquids (such as diesel fuel and fuel oil). With the information from this study, the Colorado State Patrol developed a statewide hazardous materials transportation network. This network applies to all vehicles transporting hazardous materials that are subject to placarding requirements under 49 CFR 172.504, except shipments of HRCQ radioactive materials as defined in 49 CFR 173.403. Vehicles carrying gasoline, diesel fuel, or liquefied petroleum gas are not affected unless a city or county specifically petitions that such vehicles be included; and vehicles carrying hazardous materials necessary for agricultural production to or from a farm or ranch are exempt. Also exempt from restrictions is that portion of a trip that is for pickup or delivery of hazardous materials after the vehicle has approached the pickup or delivery point as closely as is reasonable and feasible on a designated route.

Colorado's experience demonstrates how a State can determine and tailor the scope and characteristics of a routing system to its own particular needs. Also, it is generally only at the State level that there exists the necessary combination of data expertise on such matters as State highway conditions, accident rates, knowledge of local road conditions and characteristics, environmental issues, demographic factors, and appropriate sensitivity to local, regional and interstate concerns.

Colorado's experience also indicates that a large proportion of trips involving the transport of hazardous materials by truck are of a local and regional, or more generally, of an intrastate nature, and that these shipments are closely linked to the commercial activities of the State and its economic health and welfare. The highly local and regional of hazardous materials transportation in Colorado is not peculiar to it alone; it is characteristic of the transportation patterns of many other States. In fact, the average shipment distance for all hazardous materials transported by truck in the United States is about 200 miles. The average shipment distance is much less for gasoline and other refined petroleum products which, as noted previously, account for more than half of all hazardous materials transported in the United States. The short shipment distances, when coupled with numerous delivery points which change from day to day and month to month, make it extremely difficult to designate a fixed routing system for these materials.

The Colorado experience also shows that while there is a definite role for local and regional governments in designating routes for hazardous materials, this role cannot be exercised

in an isolated, unilateral, independent fashion. Thus, despite the local and regional nature of hazardous materials transportation patterns in Colorado, the State of Colorado does not allow local or county governments to regulate the routing of these materials. Unless local or county routing actions are coordinated at a higher level and informed by a broader perspective, significant economic and safety dislocations could result. Therefore, it is at the State level where the safety concerns and hazardous materials transportation patterns associated with local and regional governments can best be properly coordinated and integrated into a cohesive, unified hazardous materials transportation network.

Hazardous Materials Transportation Uniform Safety Act of 1990

On November 16, 1990, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615, 104 Stat. 3244) was enacted. The FHWA was delegated the responsibility by the Secretary, as published in the **Federal Register** (56 FR 31343, July 10, 1991), to implement sections 105(b) and (c) of the Hazardous Materials Transportation Act of 1975 (HMTA), as amended by Section 4 of the HMTUSA. This included transferring the rulemaking and program responsibility for hazardous materials highway routing from RSPA to the FHWA, with the exception of the currently pending applications for inconsistency rulings and non-preemption determinations, which will remain a RSPA responsibility. Comments and other materials submitted to the RSPA docket (HM-203) have been transferred and are available in the FHWA docket established by this NPRM.

Section 4 of the HMTUSA partially amends section 105(b) of the HMTA (49 U.S.C. 1804(b)), and provides that "* * * each State and Indian tribe may establish, maintain and enforce: (A) Specific highway routes over which hazardous materials may and may not be transported by motor vehicle in the area which is subject to the jurisdiction of such State or Indian tribe, and (B) limitations and requirements with respect to highway routing." These "routing designations", as defined in the proposed regulation, would include regulation by or of such features as times, lanes, routes, types of loads or vehicles, inspections, permits and fees which would specifically apply to or affect the highway routing of hazardous materials.

Section 4 of the HMTUSA requires the Secretary to establish, by regulation, Federal standards which would be required to be followed by the States and Indian tribes if they establish, maintain or enforce routing designations. The Federal standards must provide for enhancement of safety; public participation; consultation with other State, local and tribal governments; through routing; reasonable time to reach agreement between affected States or Indian tribes; avoidance of unreasonable burden on commerce; timely establishment of State and Indian tribe routing; reasonable routes to terminals and other facilities; State responsibility for local compliance; and a number of "factors to consider." Section 4 prohibits the Secretary from assigning specific weights to the "factors to consider" in the Federal standards but does provide for Federal preemption and dispute resolution of State and Indian tribe routing designations to allow for reasonably consistent application of the Federal standards among adjacent jurisdictions. The Federal routing regulations, as a minimum, are required to be applicable to motor vehicles transporting in commerce hazardous materials for which placarding of the vehicle is required in accordance with 49 CFR 172.504. However, section 4 does not require that the existing radioactive routing regulations be revised and, therefore, no changes are proposed for those regulations in this rulemaking. Also, the proposed routing regulations, as required by the HMTUSA, would not supersede or affect application of the existing Federal truck size and weight regulations.

Section 4 of the HMTUSA also partially amends section 105(c) of the HMTA (49 U.S.C. 1804(c)) and requires the Secretary, in coordination with the States, to periodically update and publish a list of currently effective hazardous materials highway route designations.

Discussion of Proposed Regulations

Purpose and Scope

The FHWA is proposing regulations to implement the requirements of the HMTUSA in a new subpart C, Routing, in part 397 of title 49, Code of Federal Regulations. This proposed regulation would implement the requirements of the HMTUSA by establishing Federal standards and procedures which States and Indian tribes would be required to follow if they establish, maintain or enforce routing designations for the highway transportation of non-radioactive hazardous materials (NRHM). The intent is to ensure that NRHM are moved safely and that commerce is not burdened by restrictive, uncoordinated or conflicting requirements of various jurisdictions. For example, the regulation would require that through routing be maintained by prohibiting a forced deviation of over 100 miles or an increase of more than 25% in a trip length, whichever is shorter, from the most direct route. This would prevent a jurisdiction from imposing unreasonable routes or delays, with the consequential extra costs for the motor carrier. Although the proposed regulation limits the policy making discretion of the States, political subdivisions or Indian tribes if they decide to control or regulate NRHM routing, the standards and requirements of this regulation allow flexibility as prescribed or allowed by the HMTUSA. The FHWA does not propose to designate or approve routes used for transporting NRHM. However, any State or Indian tribe that chooses to establish, maintain or enforce NRHM routing designations would be required to follow the Federal standards being established by this rulemaking. The States and Indian tribes would also be required to ensure that any NRHM routing designations by political subdivisions under their jurisdiction are made in accordance with these standards. Any NRHM routing designations that fail to comply with these standards would be preempted by the HMTA. Any person, including a State, political subdivision thereof, or Indian tribe affected by such a NRHM routing designation could apply to the Administrator for a preemption determination. Procedures for obtaining Federal preemption determinations, waivers of preemptions and dispute resolutions are included in the proposed regulation.

The proposed routing regulations would require States and Indian tribes to report existing NRHM routing designations within their boundaries to the FHWA and, thereafter, to report any new additions or changes to these routing designations when established.

The motor carriers transporting NRHM would be required to comply with the State and Indian tribe NRHM routing designations, or, if no such designations, the routing requirements currently set forth in 49 CFR 397.9(a) which would be incorporated into the proposed regulation. The routing plan requirements currently set forth in 49 CFR 397.9(b) for transporting Class A or Class B explosives also would be incorporated into the proposed NRHM regulation.

Federal regulations for highway routing of radioactive materials, under 49 CFR 177.825, will remain unchanged

by this rulemaking. The FHWA and the RSPA are currently considering the moving of the highway routing provisions of 49 CFR 177.825 into 49 CFR part 397, and the changing of the location for reporting from the RSPA to the FHWA. These issues will be addressed in a separate rulemaking action.

When this regulation 49 CFR part 397, subpart C is issued, 49 CFR 177.810 which specifically applies to tunnels used for mass transit would no longer be applicable to the highway routing of hazardous materials. Because 49 CFR 177.810 would no longer be applicable to the highway routing of hazardous materials, comments are invited regarding whether 49 CFR 177.810 should be deleted from the hazardous materials regulations.

Applicability

The provisions of this proposed regulation would be applicable to States, including any political subdivisions, and Indian tribes that establish routing designations affecting the transportation of non-radioactive hazardous materials for which placarding of the vehicle is required pursuant to the Federal hazardous materials regulations. The proposed regulations also contain several provisions which would be applicable to motor carriers transporting in commerce NRHM for which placarding of the vehicle is required under Federal regulations.

The HMTUSA authorizes the Secretary to extend the applicability of the regulation to all hazardous materials. Therefore, the FHWA is hereby soliciting comments from the public as to whether other hazardous materials should be covered by the proposed regulations. As stated earlier in this document, existing regulations governing highway route designations for the transportation of radioactive materials will remain in 49 CFR 177.825; however, FHWA intends to incorporate the regulation into 49 CFR part 397 as part of a separate rulemaking action in the future.

This proposed regulation would be specifically applicable to NRHM routing designations. The general term "routing designations" as defined in the proposed regulation would include any regulation, limitation, or restriction which would have the effect of restricting or prohibiting the transportation of all hazardous materials over a highway route, a specific portion of a route, or during a specific time period. Accordingly, this proposed regulation would be applicable to NRHM routing designations—such as curfews or time limitations, lane restrictions, prior notice, bonding, permit, and escort requirements—that affect the transportation of NRHM.

Any routing designation, as defined, would be subject to the jurisdiction of the FHWA. Regulations, limitations, or restrictions affecting the transportation of hazardous materials and which are not related to routing designations, such as those relating to packaging, labeling, shipping papers, and reporting of releases, would not be affected by this proposed rule and would remain under the jurisdiction of the RSPA. Other regulations, limitations, or restrictions on motor vehicles which are not specific to the transporting of hazardous materials, such as height, width or weight restrictions for roads and bridges or prohibitions on use of downtown streets by trucks over certain sizes, would not be affected or reported.

Motor Carrier Responsibility for Routing

Motor carriers transporting NRHM would be required to comply with the NRHM routing designations of States or Indian tribes. Where States and Indian tribes do not have NRHM routing designations, motor carriers would be required to operate over routes which avoid heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, as is currently required by 49 CFR 397.9. The proposed rule would incorporate this and the written route plan requirement of § 397.9 into the proposed § 397.67.

Motor carriers transporting radioactive hazardous materials would continue to follow the requirements of existing 49 CFR 177.825, which would remain unchanged by this rulemaking. The reporting requirements of § 177.825 will be modified so that the information is sent to the FHWA instead of the RSPA in a separate rulemaking action which will be separately published in the **Federal Register**.

State and Indian Tribe Jurisdiction Over Routing

This portion of the proposed rule would establish regulations that must be followed by States and Indian tribes if they impose routing designations for NRHM. If a political subdivision of a State wished to impose NRHM routing designations, the State would be required to ensure that the political subdivision follows these regulations including coordination with and approval by the routing agency designated by the Governor. The States would be responsible for any NRHM routing designations that local jurisdictions establish, including resolving any disputes between subdivisions. The proposed regulations would require the States and Indian tribes to designate routing agencies, which would ensure that all NRHM routing designations are made in compliance with the Federal standards.

Procedures for States and Indian Tribes

1. Federal Standards

The proposed Federal regulations include standards which closely follow the specific requirements of the HMTUSA and include procedures for States and Indian tribes to follow if they impose routing designations for NRHM transportation by motor carriers. The Federal standards provide for enhancement of safety; public participation; consultation with other State, local and tribal governments; through routing; reasonable time to reach agreement between affected States or Indian tribes; not burdening commerce; timely establishment of State and Indian tribe routing; reasonable routes to terminals; State responsibility for local compliance; and a number of "factors to consider." The list of "factors to consider" which State and Indian tribes would be required to use in regulating routing is contained in the proposed § 397.71 and includes the factors required by the HMTUSA and proposed additional factors regarding climatic conditions and congestion. The list also includes a proposed explanation for each factor. In accordance with the HMTUSA, the FHWA will not assign any specific weight to be given by the States or Indian tribes in considering the factors. These factors, together with the "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials", DOT/RSPA/OHMT–89–02, July 1989 (or an equivalent routing analysis) would be used in making any NRHM routing designations. Failure to comply with the standards would result in preemption. In order to ensure compliance with the Federal standards, the FHWA would monitor the practices and procedures being used by the States and Indian tribes.

2. Public Information and Reporting Requirements

The HMTUSA requires the Secretary, in coordination with the States, to periodically update and publish a list of currently effective hazardous materials highway routing designations. Accordingly, the FHWA proposes to compile and publish in the **Federal Register**, annually, a listing of all

hazardous materials routing designations. To comply with this requirement, the FHWA proposes to require States and Indian tribes to initially submit, to FHWA, information on all the existing NRHM routing designations within their boundaries. After the initial submission, any new or changed NRHM routing designation would be required to be submitted to FHWA within 60 days after establishment of such routing designation. Any NRHM routing designation which is not reported to the FHWA would be considered preempted. The States' and Indian tribes' routing agencies would report the required information to the FHWA.

The States and Indian tribes would be required to consider and use additional methods such as maps, listings, road signs, or some combination of these measures as may be needed to adequately inform the public of their NRHM routing designations.

3. Dispute Resolution

Disputes involving through highway routing or agreements between political jurisdictions within a State would be settled by the State's routing agency. Disputes involving through highway routing or agreements between States or Indian tribes would be submitted to the Federal Highway Administrator for resolution. Details of the dispute would be furnished, together with a description of what was done to try to settle it, plus a recommendation for action by the Administrator. Once a dispute is submitted to the Administrator, no court action could be taken for one year or until after a decision by the Administrator, whichever occurs first.

4. Judicial Review of Dispute Decision

A party to a dispute who is adversely affected by a dispute resolution decision of the Administrator could obtain judicial review of the decision if such court action is filed within 90 days after the Administrator's decision becomes final.

5. Preemption

Any person, including a State, political subdivision thereof, or Indian tribe, affected by a NRHM routing designation could apply to the Administrator for a determination of whether such routing designation is preempted. Any NRHM routing designation would be preempted if it did not comply with the requirements in the Federal standards. Detailed procedures are in the proposed regulation for carrying out this provision. Preemption would not apply if a waiver of preemption is granted by the Administrator, if the grandfather provision as noted in paragraph number 7, below, applies, or if Federal law provides otherwise.

6. Waivers of Preemption

A State, political subdivision or Indian tribe would be authorized to apply to the Administrator for a waiver of preemption. The Administrator would be authorized to waive preemption of a NRHM routing designation, based on a determination that it provided equal or better protection to the public than these regulations would provide, and it did not unreasonably burden commerce.

7. Grandfather Provisions

The proposed regulations would incorporate the grandfather clause of the HMTUSA, which allows routing designations which were established before the date of issuance of these regulations to be exempted from the: (1) Public participation, (2) consultation and (3) timeliness requirements of the proposed Federal standards. In addition, the proposed regulations would incorporate the HMTUSA requirement that allows routing designations established before the date of the HMTUSA enactment (November 16, 1990) to be exempted from complying with the "factors to be considered" by the States or Indian tribes in making routing designations.

8. Timeliness

Petitions for preemption determinations and waivers of preemption would be considered denied if the Administrator did not take action on an application within 180 days.

9. Judicial Review of Preemptions or Waivers of Preemption Decisions

A party to a proceeding involving a preemption determination or waiver of preemption could seek review of the Administrator's decision in a U.S. District Court if a petition were filed with the court within 60 days after the decision become final.

Request for Comments

Specific comments pertaining to the practicability and any alternatives to the proposed regulation are requested. The FHWA is particularly interested in receiving responses to the following specific questions:

1. Will the proposed Federal standards, particularly the "factors to consider," provide for the safe through-movement of NRHM or should other specific factors be established?

2. Are the proposed provisions of 49 CFR 397.71(b)(4) for through routing (no deviation of more than 100 miles or an increase of more than 25 percent in the trip length, whichever is shorter) and routes to terminals (no deviation over twice the shortest route) reasonable in terms of costs and effects or would other distances or percentage deviations be more appropriate?

3. Should stricter Federal standards be applied for some types and quantities of HRHM or is the proposed standard, which allows States and Indian tribes flexibility, considered adequate and desirable?

4. Are the dispute resolution procedures reasonable and adequate?

5. How should the routing information be reported by the States and Indian tribes?

6. What, if any, situations or problems could arise from the FHWA/RSPA jurisdictional overlap of routing and non-routing issues.

7. Comments are requested on anticipated costs and benefits associated with this rulemaking.

Commenters are not limited to responding to the above issues and may submit any comments or relevant information on the highway routing of hazardous materials in responding to this docket.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this rulemaking is not major within the meaning of Executive Order 12291. This rulemaking is considered a significant regulation under Department of Transportation regulatory policies and procedures because of substantial congressional and public interest. This interest involves minimizing risks while allowing reasonable highway routing for the transportation of NRHM. The proposed regulations would not require the use of NRHM routing designations or Federal preemption determinations, waivers of preemption, and dispute resolution but would provide standards and procedures which would be required to be followed if these actions are chosen to be used. The benefits from implementing the proposed regulations, such as NRHM routing designation continuity, public participation, uniform standards, and preemption and dispute resolution procedures, are considered greater than the costs of providing the required coordination, documentation, and analysis which would allow discretion in level of detail. The FHWA anticipates that the economic impact of this rulemaking will be minimal and,

therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this proposed rule on small entities such as local governments and businesses. The proposed regulations would not require the use of NRHM routing designations or Federal preemption determinations, waivers of preemption, and dispute resolution but would provide standards and procedures which would be required to be followed if these actions are chosen to be used. The proposed discretionary nature of the actions would allow for cost saving options to be used in balancing the needs in commerce and the risks in the transportation of NRHM. To date, relatively few States (2) and local jurisdictions (approximately 20) have chosen to establish NRHM routing designations. The grandfather provisions would allow these existing NRHM routing designations to remain without full re-justification. The FHWA has concluded that the proposed regulation would not substantially affect the ability of or cost to local jurisdictions in establishing needed NRHM routing designations. The preemption and dispute resolution procedures provide all small entities more effective and efficient means of resolving routing issues. The benefits from implementing the proposed regulations, such as routing continuity, public participation, uniform standards, and preemption and dispute resolution procedures, are considered greater than the costs of providing the required coordination, documentation, and analysis which, for the most part, would be flexible and discretionary in level of detail. Based on the evaluation, the FHWA certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice and the public meetings.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The HMTUSA requires the Secretary to adopt standards which States and Indian tribes must follow if they establish, maintain, or enforce NRHM routing designations (specific highway routes over which NRHM may and may not be transported within their jurisdictions; limitations or requirements for highway routing). The proposed rule would recognize the State and Indian tribe roles in the designation of highway routes for NRHM while de-emphasizing the role of local governments. The proposed rule would allow discretion by the States and Indian tribes as to whether they impose NRHM routing designations. Each State and Indian tribe would be free to establish NRHM routing designations tailored to its own needs in accordance with the Federal standards, using the DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," or an equivalent routing analysis which adequately considers overall risk to the public. States and localities have a better understanding of the relative safety of the highways within their jurisdictions than does the Federal government. The proposed NRHM routing standards, however, recognize that it is difficult for local governments to designate highway routes that are sensitive to national and State transportation needs.

The proposed rule would limit policy making discretion of the States, their political subdivisions and Indian tribes. The proposed rule is necessary, however, to achieve the purposes and implement the requirements of the HMTUSA. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order as well as the applicable legislative authority for this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection, reporting, and record-keeping provisions in § 397.73 of this proposed rule are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Department of Transportation. All comments must reference the title for this notice, "Transportation of Hazardous Materials, Highway Routing."

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highways and roads, Motor carrier safety permits.

In consideration of the foregoing, the Federal Highway Administration proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 397, by adding subpart C as set forth below.

Issued on: August 18, 1992.

T.D. Larson,

Administrator.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 App. U.S.C. 1801 *et seq.*; 49 CFR 1.48.

§ 397.9 [Removed]

2. Part 397 is amended by removing § 397.9 and by adding a new subpart C to read as follows:

Subpart C—Routing

Sec.

397.61 Purpose and scope.
397.63 Applicability.
397.65 Definitions.
397.67 Motor carrier responsibility for routing.
397.69 Highway routing designations; preemption.
397.71 Federal standards.
397.73 Public information and reporting requirements.
397.75 Dispute resolution.
397.77 Judicial review of dispute decision.
397.79 Preemption determinations; procedure.
397.81 Waivers of preemption.
397.83 Grandfather provisions.
397.85 Timeliness.

Sec.
397.87 Judicial review of preemption or waiver of preemption decision.

Subpart C—Routing

§ 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported by motor vehicles.

§ 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces routing designations over which NRHM may and may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded NRHM in commerce.

§ 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

Administrator. The Federal Highway Administrator, who is the chief executive of the Federal Highway Administration, an agency within the Department of Transportation, or his/her designate.

Commerce. Any trade, traffic, or transportation in the United States which is between a place under the jurisdiction of a State or Indian tribe and any place outside of such jurisdiction; or is solely within a place under the jurisdiction of a State or Indian tribe.

FHWA. The Federal Highway Administration, an agency within the Department of Transportation.

Hazardous material. A substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

Indian tribe. Has the same meaning as contained in section 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450(b).

Motor carrier. A for-hire motor carrier or a private motor carrier of property. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.

Motor vehicle. Any vehicle, machine tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

NRHM. A non-radioactive hazardous material transported by motor vehicle in quantities which require placarding, pursuant to Tables 1 and 2 of 49 CFR 172.504. The term NRHM does not include radioactive materials covered by 49 CFR 177.825.

Political subdivision. A municipality, public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Radioactive material. Any material having a specific activity greater than 0.002 microcurie per gram (uCi/g), as defined in 49 CFR 173.403.

Routing agency. The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe. Any NRHM routing designation by a political subdivision of a State shall be considered as a designation made by that State.

Routing designations. Any regulation, limitation, or restriction which would have the effect of restricting or prohibiting the transportation of hazardous materials over a highway route, a specific portion of a route, or during a specific time period. This includes such highway route restrictions as curfews or time limitations, lane restrictions, prior notice, bonding, permit, and escort requirements, that affect the transportation of hazardous materials.

Secretary. The Secretary of Transportation.

State. A State of the United States, District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa or Guam.

§ 397.67 Motor carrier responsibility for routing.

(a) A motor carrier transporting NRHM shall comply with NRHM routing designations of a State or Indian tribe pursuant to this subpart.

(b) Where States and Indian tribes have not designated NRHM routes pursuant to this subpart, the motor carrier shall operate over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, except where the motor carrier determines that:

(1) There is no practicable alternative,

(2) A reasonable deviation is necessary to reach terminals, points of loading and unloading, facilities for food, fuel, repairs, rest, or a safe haven, or

(3) A reasonable deviation is required by emergency conditions.

(c) Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with paragraph (b) of this section.

(d) Before a motor carrier requires or permits a motor vehicle containing Class A or Class B explosives, defined in 49 CFR 173.53 and 173.88, respectively, to be operated, a written route plan that complies with this section must be prepared and a copy furnished to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the trip begins at a location other than the carrier's terminal.

(e) Motor carriers transporting radioactive materials must comply with § 177.825 of this title.

§ 397.69 Highway routing designations; preemption.

(a) Any State or Indian tribe that establishes, maintains, or enforces a highway routing designation over which NRHM may and may not be transported shall comply with the highway routing standards set forth in § 397.71 of this subpart. For purposes of this subpart, any highway route designation affecting the highway transportation of NRHM, made by a political subdivision of a State shall be considered as one made by that State, and all requirements of this subpart apply.

(b) Except as provided in §§ 397.75, 397.81, and 397.83, a NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804(b)(4)). This provision shall become effective on [2 years after issuance of final rule].

(c) A State or Indian tribe may petition for a waiver of preemption in accordance with § 397.81 of this subpart.

§ 397.71 Federal standards.

(a) A State or Indian tribe shall comply with the Federal standards under paragraph (b) of this section when establishing, maintaining or enforcing specific NRHM routing designations over which NRHM may and may not be transported.

(b) The Federal standards are as follow:

(1) *Enhancement of public safety.* The State or Indian tribe shall make a

finding, supported by the record to be developed in accordance with paragraphs (b)(2)(ii) and (b)(3)(iv) of this section, that any NRHM routing designation enhance public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation. In making such a finding, the State or Indian tribe shall consider:

(i) The factors established in paragraph (b)(9) of this section; and

(ii) The DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," DOT/RSPA/OHMT–89–02, July 1989 [1] or its most current issuance, or

(iii) An equivalent routing analysis which adequately considers overall risk to the public.

(2) *Public participation.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall undertake the following actions to ensure participation by the public in the routing process:

(i) The public shall be given notice of the proposed NRHM routing designation at least 30 days prior to the date of the public hearing required to be held under paragraph (b)(2)(ii) of this section. Such notice shall be given by publication in at least two newspapers of general circulation in the affected area or areas; and shall contain a complete description of the proposed routing designation, together with the date, time, and location of any public hearings.

(ii) The State or Indian tribe shall hold at least one public hearing on the record during which the public will be afforded the opportunity to present their views and any information or data related to the proposed NRHM routing designation. The State shall make available to the public, upon payment of prescribed costs, copies of the transcript of the hearing, which shall include all exhibits and documents presented during the hearing or submitted for the record.

(3) *Consultation with others.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall consult with officials of affected political subdivisions, States and Indian tribes, and any other affected parties. Such actions shall include the following:

(i) At least 60 days prior to issuing any such routing designation, the State or Indian tribe shall provide notice, in writing, of the proposed routing designations to officials responsible for highway routing in all affected States and Indian tribes. This notice shall request the approval of those States and Indian tribes, in writing, of the proposed routing designation.

(ii) The manner in which consultation under this paragraph is conducted is left to the discretion of the State or Indian Tribe.

(iii) The State or Indian tribe shall attempt to resolve any concerns or disputes expressed by the consulted officials related to the proposed routing designation.

(iv) The State or Indian tribe shall keep a record of the name and address of the officials notified pursuant to this section and of any consultation or meeting conducted with these officials or their representatives. Such record shall describe any concerns or disputes presented by the officials; and any actions undertaken to resolve such disputes or address any concerns.

(4) *Through routing.* In establishing any NRHM routing designation, the State or Indian tribe shall ensure through highway routing for the transportation of NRHM between adjacent areas. The term "through highway routing" as used in this paragraph means that the designation must ensure continuity of movement so as to not impede or unnecessarily delay the transportation of NRHM. Any designation shall not force a deviation of more than 100 miles or result in an increase of more than 25% in the trip length, whichever is shorter, from the most direct highway route between the primary origin and destination of an individual carrier's shipment. The State or Indian tribe shall utilize the procedures established in paragraphs (b)(2) and (b)(3) of this section in meeting this requirement.

(5) *Agreement of other States; burden on commerce.* Any NRHM routing designation which affects another State or Indian tribe shall be established, maintained, or enforced only if:

(i) It does not unreasonably burden commerce, and

(ii) It is agreed to by the affected State or Indian tribe, within 60 days of receipt of the notice sent pursuant to paragraph (b)(3)(i) of this section or it is approved by the Administrator pursuant to § 397.75.

(6) *Timeliness.* The establishment of a NRHM routing designation by any State or Indian tribe shall be completed within 18 months of the notice given in either paragraphs (b)(2) or (b)(3) of this section, whichever occurs first.

(7) *Reasonable routes to terminals and other facilities.* In establishing or providing for reasonable access, the State or Indian tribe shall use the shortest practicable route considering the factors listed in paragraph (b)(9) of this section; however, such route or deviation shall not exceed twice the distance of the most direct route. In establishing any NRHM routing designation, the State or Indian tribe shall provide reasonable access for motor vehicles transporting NRHM to reach—

(i) Terminals,

(ii) Points of loading and unloading, and

(iii) Facilities for food, fuel, repairs, rest, and safe havens.

(8) *Responsibility for local compliance.* The States shall be responsible for ensuring that all of their political subdivisions comply with the provisions of this subpart. The States shall be responsible for resolving all disputes between such political subdivisions within their jurisdictions. If a State or any political subdivision thereof, or an Indian tribe chooses to establish, maintain, or enforce any NRHM routing designation, the Governor, or Indian tribe, shall designate a routing agency for the State or Indian tribe, respectively. The routing agency shall ensure that all NRHM routing designations within its jurisdiction comply with the Federal standards in this section. The State or Indian tribe shall comply with the public information and reporting requirements contained in § 397.73.

(9) *Factors to consider.* Except as provided in § 397.83, in establishing any NRHM routing designation, the State or Indian tribe shall consider the following factors:

(i) *Population density.* The population potentially exposed to a NRHM release shall be estimated from the density of the residents, employees, motorists, and other persons in the area, using United States census tract maps or other reasonable means for determining the population within a potential impact zone along a designated highway route. The impact zone is the potential range of effects in the event of a release. Special populations such as schools, hospitals, prisons, and senior citizen homes shall, among other things, be considered when determining the potential risk to the populations along a highway routing. Consideration shall be given to the amount of time during which an area will experience a heavy population density.

(ii) *Type of highway.* The characteristics of each alternative NRHM highway routing designation shall be compared. Vehicle weight and size limits, underpass and bridge clearances, roadway geometrics, number of lanes, degree of access

[1] This document may be secured from Traffic Control Division, HHS–30, Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

control, and median and shoulder structures are examples of characteristics which a State or Indian tribe must consider.

(iii) *Types of quantities of NRHM.* An examination shall be made of the type and quantity of NRHM normally transported along highway routes which are included in a proposed NRHM routing designation, and consideration shall be given to the relative impact zone and risks of each type and quantity.

(iv) *Emergency response capabilities.* In consultation with the proper fire, law enforcement, and highway safety agencies, consideration shall be given to the relative emergency response capabilities which may be needed as a result of a NRHM routing designation. The analysis of the emergency response capabilities shall be based upon the proximity of the emergency response facilities and their capabilities to contain and suppress NRHM releases within the impact zones.

(v) *Results of consultation with affected persons.* Consideration shall be given to the comments and concerns of all affected persons and entities provided during public hearings and consultations conducted in accordance with this section.

(vi) *Exposure and other risk factors.* States and Indian tribes may define the exposure and risk factors associated with any NRHM routing designations. The distance to sensitive areas shall be considered. Sensitive areas include, but are not limited to, homes and commercial buildings; special populations in hospitals, schools, handicapped facilities, prisons and stadiums; water sources such as streams and lakes; and natural areas such as parks.

(vii) *Terrain considerations.* Topography along and adjacent to proposed NRHM routing designations must be considered.

(viii) *Continuity of routes.* Adjacent jurisdictions shall be consulted to ensure routing continuity for NRHM across common borders. Deviations from the most direct route shall be minimized.

(ix) *Alternative routes.* Consideration shall be given to alternative routes for NRHM, which shall be reviewed, examined, and evaluated during any public hearings or consultations conducted in accordance with this section.

(x) *Effects on commerce.* Any NRHM routing designations made in accordance with this subpart shall not create an unreasonable burden upon interstate or intrastate commerce.

(xi) *Delays in transportation.* No NRHM routing designations may create unreasonable delays in the transportation of NRHM.

(xii) *Climatic conditions.* Weather, wind, and other climatic conditions affect the dispersion of the NRHM upon release and increase the difficulty of controlling it and cleaning it up, and as such, these conditions shall be given appropriate consideration.

(xiii) *Congestion.* The possibility of congestion in the traffic flow during certain times of the day or on certain days of the week shall be considered, since the exposure to any release and the subsequent emergency response operations are affected by congestion.

§ 397.73 Public information and reporting requirements.

(a) *Public information.* Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placement must comply with the provisions of the Manual on Uniform Traffic Control Devices,[2] published by FHWA, particularly the Hazardous Cargo signs identified as R14–2 and R14–3 shown in Section 2B–43 of that Manual.

(b) *Reporting and publishing requirements.* Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdictions on [*DATE OF ISSUANCE OF FINAL REGULATION*] to the FHWA, HHS–30, 400 7th St., SW., Washington, DC 20590–0001 by [*90 DAYS AFTER ISSUANCE OF FINAL REGULATION*]. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FHWA at the above address. This information will be consolidated by the FHWA and published in whole or as updates in the **Federal Register** annually.

§ 397.75 Dispute resolution.

(a) *Petition.* One or more States or Indian tribes may petition the Federal Highway Administrator to resolve a dispute relating to through highway routing of NRHM or to an agreement on a proposed NRHM routing designation. In resolving a dispute under these provisions the Administrator will provide the greatest level of highway safety possible without unreasonably burdening commerce, and ensure compliance with the Federal standards established at § 397.71 of this subpart.

(b) *Filing.* Each petition for dispute resolution filed under this section must:

(1) Be submitted to the Federal Highway Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. Attention: Hazardous Materials Routing Dispute Resolution Docket, HCC–20.

(2) Identify the State or Indian tribe filing the petition and any other State, political subdivision, or Indian tribe whose NRHM routing designation is the subject of the dispute.

(3) Contain a certification that the petitioner has complied with the notification requirements of paragraph (c) of this section, and include a list of the names and addresses of each State, political subdivision, or Indian tribe official who was notified of the filing of the petition.

(4) Clearly set forth the dispute for which resolution is sought, including a complete description of any disputed NRHM routing designation and an explanation of how the disputed routing designation affects the petitioner or how it impedes through highway routing.

(5) Describe any actions taken by the State or Indian tribe to resolve the dispute.

(6) Explain the reasons why the petitioner believes that the Administrator should intervene in resolving the dispute.

(7) Describe any proposed actions that the Administrator should take to resolve the dispute and how these actions would provide the greatest level of highway safety without unreasonably burdening commerce and would ensure compliance with the Federal standards established in this subpart.

(c) *Notice.* (1) Any State or Indian tribe that files a petition for dispute resolution under this subpart shall mail a copy of the petition to any affected States, political subdivisions, or Indian tribes, accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the petition to the Administrator within 45 days.

(2) By serving notice on any other States, political subdivisions, or Indian tribes determined by the Administrator to be possibly affected by the issues in dispute or the resolution sought, or by publication in the **Federal Register**, the

[2] This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 and has Stock No. 050–001–81001–8. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. See 23 CFR part 655, subpart F.

Administrator may afford those persons an opportunity to file written comments on the petition.

(3) Any affected States, political subdivisions, or Indian tribes submitting written comments to the Administrator with respect to a petition filed under this section shall send a copy of the comments to the petitioner and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

(d) *Court Actions.* After a petition for dispute resolution is filed in accordance with this section, no court action may be brought with respect to the subject matter of such dispute until a final decision has been issued by the Administrator or until the last day of the one-year period beginning on the day the Administrator receives the petition, whichever occurs first.

(e) *Alternative Dispute Resolution.* Upon receipt of a petition filed pursuant to paragraph (a) of this section, the Administrator may schedule a hearing to attempt to resolve the dispute and, if a hearing is scheduled, will notify all parties to the dispute of the date, time and place of the hearing. During the hearing the parties may offer any information pertinent to the resolution of the dispute. If an agreement is reached, it may be stipulated by the parties, in writing, and, if the Administrator agrees, made part of the decision in paragraph (f) of this section. If no agreement is reached, the Administrator may take the matter under consideration and announce his or her decision in accordance with paragraph (f) of this section. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final decision by the Administrator.

(f) *Decision.* The Administrator will issue a decision based on the petition, the written comments submitted by the parties, the record of the hearing, and any other information in the record. The decision will include a written statement setting forth the relevant facts and the legal basis for the decision.

(g) *Record.* The Administrator will serve a copy of the decision upon the petitioner and any other party who participated in the proceedings. A copy of each decision will be placed on file in the public docket. The Administrator may publish the decision or notice of the decision in the **Federal Register.**

§ 397.77 Judicial review of dispute decision.

Any State or Indian tribe adversely affected by the Administrator's decision under § 397.75 of this subpart may seek review by the appropriate district court of the United States under such proceeding only by filing a petition with such court within 90 days after such decision becomes final.

§ 397.79 Preemption determinations; procedure.

(a) *Application.* Any person including a State, political subdivision thereof, or Indian tribe, affected by a NRHM routing designation may apply to the Administrator for a determination of whether such routing designation is preempted in accordance with § 397.69. The Administrator will publish notice of the application in the **Federal Register.**

(b) *Filing.* Each application filed under this section for a determination of preemption must:

(1) Be submitted to the Federal Highway Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590–0001. Attention: Hazardous Materials Routing Preemption Docket, HCC–20;

(2) Describe or state the NRHM routing designation for which the determination is sought;

(3) Specify each requirement of the Hazardous Materials Transportation Act, or the regulations issued under the Act, which constitutes a basis for the petition;

(4) Explain why the applicant believes the NRHM routing designation should be preempted; and

(5) Set forth how the applicant is affected by the NRHM routing designation.

(c) *Relief restriction.* Once the Administrator has published notice in the **Federal Register** of an application received pursuant to the requirements set forth in this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first.

(d) *Eligibility.* This section shall not be construed as prohibiting any person, State, political subdivision, or Indian tribe directly affected by the NRHM routing designation from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Administrator under paragraph (b)(1) of this section.

(e) *Notice.* (1) The applicant shall mail a copy of the application to any affected State or Indian tribe. The notice must include a statement that the State or Indian tribe may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the applicant has complied with this paragraph, and it must include the names and addresses of each State or Indian tribe official to whom a copy of the application was sent.

(2) The Administrator may, by serving notice on any other persons determined by the Administrator as persons who will be affected by the ruling sought, or by publication in the **Federal Register,** afford those persons an opportunity to file written comments on the application.

(3) Each person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond within 45 days.

(f) *Processing.* The Administrator may investigate any statement in an application and may consider any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions within 45 days. The Administrator may convene a hearing or conference, to advance the consideration of the application. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final determination by the Administrator.

(g) *Determination.*—(1) *Dismissal.* The Administrator may dismiss the application without prejudice if:

(i) It is determined that there is insufficient information upon which to base a determination; or

(ii) There is a request for additional information from the applicant, and the applicant fails to submit the additional information with 30 days.

(2) *Issuance.* Upon consideration of the application and other relevant information received, the Administrator will issue a determination. The determination will include a written statement setting forth the relevant facts and the legal basis for the determination.

(3) *Record.* The Administrator will serve a copy of the determination upon the applicant, upon any other person who participated in the proceeding, and upon any other person determined by the Administrator as affected by the determination. A copy of each determination will be placed on file in the Hazardous Materials Routing Preemption Docket. The Administrator may publish the determination or notice of the determination in the **Federal Register.**

(4) *Administrative determination.* A determination issued under this section constitutes an administrative determination as to whether a particular NRHM routing designation is preempted. The fact that a determination has not been issued under this section with respect to a particular highway routing designation carries no implication as to whether the designation is preempted.

§ 397.81 Waivers of preemption.

(a) *General rule.* The Administrator may waive the preemption of a NRHM routing designation upon a determination that such designation affords an equal or greater level of protection to the public than is afforded by this subpart and that it does not unreasonably burden commerce.

(b) *Procedure.*—(1) *Application.*—Any State, political subdivision, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any NRHM routing designation that the State, political subdivision, or Indian tribe acknowledge to be preempted in accordance with § 397.69 of this subpart. The Administrator will publish notice of the application in the **Federal Register.**

(2) *Filing.* Each application filed under this section for a waiver of preemption determination must:

(i) Be submitted to the Federal Highway Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590–0001. Attention: Hazardous Materials Routing Preemption Docket, HCC–20;

(ii) Set forth the text of the NRHM routing designation for which the determination is being sought;

(iii) Include a copy of any court order and any determination issued pursuant to § 397.75 of this part pertinent to the application;

(iv) Contain an express acknowledgment by the applicant that the NRHM routing designation is preempted by this subpart unless a preemption has been so determined by a court of competent jurisdiction or in a ruling issued under § 397.75 of this subpart;

(v) State why the applicant believes the State, political subdivision, or Indian tribe NRHM routing designations afford an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act; and

(vi) State why the applicant believes the State, political subdivision, or Indian tribe NRHM routing designations do not unreasonably burden commerce.

(c) *Notice.* (1) The applicant State, political subdivision, or Indian tribe shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the application has complied with this paragraph, and it must include the names and addresses of each person to whom the application was sent.

(2) The Administrator may, by serving notice on any other persons readily identifiable as persons who will be affected by the ruling sought, or by publication in the **Federal Register,** afford those persons an opportunity to file written comments on the application.

(d) *Processing.* The Administrator may investigate any statement in an application and consider any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions relevant to an application and will provide the applicant an opportunity to respond to all submissions. The Administrator may convene a hearing or conference to further investigate and consider any matter relevant to the advance of the application. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final determination by the Administrator.

(e) *Determination.*—(1) *Dismissal.* The Administrator may dismiss the application without prejudice if:

(i) It is determined that there is insufficient information upon which to base a waiver; or

(ii) There is a request for additional information from the applicant, and the applicant fails to submit the additional information.

(2) *Issuance.* Upon consideration of the application and other relevant information received, the Administrator will issue a determination. The determination will include a written statement setting forth the relevant facts and the legal basis for the determination.

(3) *Record.* The Administrator will serve a copy of the determination upon the applicant and place a copy of the waive determination in the Hazardous Materials Routing Preemption Docket. The Administrator may publish the waiver determination or notice of the waive determination in the **Federal Register.**

§ 397.83 Grandfather provisions.

NRHM routing designations established before [date of issuance of final regulations] are not required to comply with § 397.71(b)(2) on public participation; § 397.71(b)(3) on consultation with others; and § 397.71(b)(6) on timeliness. Any NRHM routing designations established before November 16, 1990, do not need to comply with the "factors to consider" contained in § 397.71(b)(9).

§ 397.85 Timeliness.

If the Administrator fails to take action on the application within 180 days of serving the notice required by §§ 397.79 or 397.81 of this subpart, the applicant may treat the application as having been denied in all respects.

§ 397.87 Judicial review of preemption or waiver of preemption decision.

A party to a proceeding under §§ 397.79 or 397.81 of this subpart may seek review by the appropriate district court of the United States of a decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after such decision becomes final.

[FR Doc. 92–20803 Filed 8–28–92; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 397

Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public hearings.

SUMMARY: The FHWA announces that it will hold four public hearings on the subject of proposed Federal regulations which would be applicable to the designation, limitation or restriction of routes for the highway transportation of placarded non-radioactive hazardous materials in commerce. The proposed

regulations are published in today's Federal Register.

DATES: The public hearings will be held between 9 a.m. and 5 p.m. (local time) at the following dates and locations:

October 14, 1992—Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024
October 16, 1992—Hyatt Regency Dallas at Reunion, 300 Reunion Boulevard, Dallas, Texas, 75207
October 19, 1992—San Francisco Marriott Hotel, 55 4th Street, San Francisco, California, 94103
October 21, 1992—Hyatt Regency O'Hare, West Bryn Mawr Street, near the Kennedy Expressway and River Road, Rosemont, Illinois, 60018

FOR FURTHER INFORMATION CONTACT: Mr. Henry W. Sandhusen, Traffic Control Division (HHS–32), Office of Highway Safety, (202) 366–2218; Mr. Raymond Cuprill or Mr. Eric Kuwana, Office of the Chief Counsel (HCC–20), (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION: The proposed regulations would implement sections 4 (b) and (c) of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615) which relates to the highway transportation of hazardous materials. The regulations would include Federal standards which States and Indian tribes must follow if they establish, maintain or enforce routing designations that: (1) Specify highway routes over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported by motor vehicles within their jurisdictions, and/or (2) impose limitations or requirements affecting highway routing of such hazardous materials. Also included are procedures relating to Federal preemption, waivers of preemption and resolution of disputes involving State or Indian tribe NRHM routing designations. States and Indian tribes would be required to furnish updated routing information for publication annually by FHWA. Existing Federal motor carrier regulations relating to highway routing of hazardous materials would be incorporated into the new regulation, but revised to require compliance with routing designations of States and Indian tribes.

Hearing Procedures

The following procedures have been established to facilitate the hearings:

1. Each public hearing will begin with a discussion panel to summarize the proposed rule.

2. The hearing officer will then provide the audience the opportunity to submit formal oral or written comments for the remainder of the public hearing time. All speakers will be limited to a five minute formal statement in order to provide an opportunity for a wide variety of individuals and representatives to make statements at the hearings.

3. Any statements made by the hearing officer or any member of the discussion panel to clarify issues during the hearing should not be construed as the position of the FHWA with respect to the rulemaking proceeding.

4. The hearing will be recorded. A transcript of the hearings and any material accepted during the hearings will be included in FHWA Docket No. MC–92–6.

5. The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual or representative will not be subject to cross-examination by any other participant. The discussion panel and the hearing officer may ask questions to clarify any statement made during the discussion period. Persons wishing to appear are not required to pre-register. Those wishing to notify the FHWA in advance may contact Mr. Henry W. Sandhusen, Traffic Control Division (HHS–32), Office of Highway Safety, (202) 366–2218, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. A table will be set up at the rear of the meeting room for on-site registration. All persons making an appearance are required to register.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 21, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–20804 Filed 8–28–92; 8:45 am]

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federal register

Monday
August 31 1992

Part V

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 17, et al.

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use and Public Information Collection Requirements; Proposed Rule and Notice

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, 250

[Notice No. 748; Re Notice Nos. 634, 649]

RIN 1512-AA20

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendment and recodification of the regulations on taxpaid distilled spirits used to manufacture nonbeverage products. The regulations in 27 CFR part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products) are proposed to be recodified as a new part, designated 27 CFR part 17. In conjunction with the recodification, a number of changes to the drawback regulations are proposed. The regulations in 27 CFR part 170, subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) are proposed to be distributed between 27 CFR part 19 and the new part 17. Conforming amendments are proposed in 27 CFR parts 19, 70, 194, and 250. Significant changes from current regulations are discussed below under "**SUPPLEMENTARY INFORMATION.**"

DATES: Comments must be submitted by September 30, 1992.

ADDRESSES: Submit all comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

Copies of the proposed regulations and the public comments will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon or Cliff Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

On July 29, 1987, ATF published Notice No. 634 in the **Federal Register** (52 FR 28286). That notice proposed a revision of regulations concerning nonbeverage drawback, including certain changes to the current regulations.

Public comment was requested concerning the proposed changes. A 90-day comment period was provided, which ended on October 27, 1987. During the comment period for Notice No. 634, ATF received four written public comments.

On December 8, 1987, ATF published Notice No. 649 (52 FR 46628). That notice requested comments relating to Treasury Decision (T.D.) ATF-263, published the same day (52 FR 46592). T.D. ATF-263 prescribed temporary regulations concerning drawback on nonbeverage products brought into the U.S. from Puerto Rico or the Virgin Islands. The comment period for Notice No. 649 ended on January 8, 1988. Since T.D. ATF-263 incorporated provisions from 27 CFR part 197 by reference, the comment period for Notice No. 634 (recodifying Part 197) was concurrently extended until January 8, 1988. No additional comments concerning Notice No. 634 were received pursuant to that extension.

At the present time, ATF has decided to solicit further public comments concerning the amendment and recodification of 27 CFR part 197. Because more than 4 years have elapsed since the previous comment periods, the proposed regulations are being republished in their entirety, so that anyone else who may wish to comment on them will have an opportunity to do so.

Public Comments

In response to Notice No. 634, comments were received from four correspondents. Their comments and ATF's responses are explained below.

1. One commenter disagreed with the requirement in proposed § 17.183, that an approved substance to prevent recovery of potable alcohol be added to certain byproducts before their removal from the nonbeverage manufacturer's premises. However, this requirement is necessary, because potable alcohol recovered from a nonbeverage manufacturer's byproduct would have been previously subject to drawback; thus less than 10% of the tax would remain paid. The possible recovery of such potable alcohol by unknown persons would present an unacceptable jeopardy to the revenue.

The commenter referred particularly to § 17.183(b), which provides that spent vanilla beans may be removed from the manufacturer's premises after they have been treated with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent the recovery of residual alcohol. The commenter sought a liberalization of § 17.183 so as not to require those poisonous substances, in order that "spent" vanilla beans might be treated with other solvents such as isopropanol and ethyl acetate to yield useful "by-products" for food applications.

It has been the experience of ATF that efficient producers of acceptable extracts from vanilla beans leave very little useful residual material, other than alcohol, in the spent beans. Subject to formula approval, all of the proposals of the commenter for improving the yield of "useful 'by-products' for food products applications" can be used by a nonbeverage manufacturer under the current regulations and may be employed under the proposed new regulations. Proposed § 17.3, Alternate methods or procedures, may also be available in an appropriate case. Contrary to the unsupported inference of the correspondent, we know of no manufacturer who suffers economic hardship because he is unable to produce vanilla extract or any other nonbeverage product due to unreasonable compliance costs.

2. Another commenter expressed support for a number of the proposed changes, including the revised retention period for records, the use of one formula at multiple locations, the ability to make a claim for credit when the drawback claimant also operates a distilled spirits plant, simplified recordkeeping requirements, and the option to petition for a variance from prescribed procedures. However, this commenter also expressed reservations about some other proposals. He requested that AFT review the "historical compliance track record" before imposing new recordkeeping requirements concerning usage of finished products (§ 17.166(b)); he questioned the proposed new definition of "distilled spirits" in § 17.11, as being different from the definition of the same term in 27 CFR part 5; and he sought a "transition period" for the implementation of new language in § 17.161 (dealing with general requirements for records).

ATF has considered the compliance record of the nonbeverage manufacturing industry and has determined that the new records in § 17.166(b) concerning usage of nonbeverage products are needed to verify that such products were manufactured in the amount claimed. Although these records will be new to the regulations, ATF regards them as included in the more general

recordkeeping requirements of 26 U.S.C. 5132, as discussed in Industry Circular 79–5.

Under current regulations (§ 197.130), records of disposition are required, except for nonbeverage products disposed of other than by sale. This is a gap in the recordkeeping system that needs to be corrected. Since most nonbeverage products are disposed of by sale, the added burden is not expected to be very significant.

The most common disposition of nonbeverage products, other than by sale, is usage in other products. Theoretically, such usage could be verified by reference to the batch records for those other products. However, in some recent cases, when doubt arose as to whether the claimed amounts of products had been manufactured, inspectors found that verification by examination of other products' batch records was an unreasonably time-consuming task. A large plant may have thousands of formulas, and an inspector has no way of knowing which of them may call for use of the product being audited. Further, some manufacturers alleged that they used nonbeverage products for purposes such as cleaning equipment, without keeping records to verify this (because such records are not required by current regulations).

To facilitate verification of claims, it is necessary that required records reflect all possible uses. For this reason, the regulations proposed by this document include the new requirement to keep records of nonbeverage products disposed of other than by sale. The requirement is minimal: The manufacturer need only record the type of disposition, the date, and the quantity disposed of.

The revised definition of "distilled spirits" was also questioned by this commenter, due to its difference from the definition of that term in 27 CFR part 5. However, Part 5 is issued under the Federal Alcohol Administration Act, while the proposed regulations in part 17 will be issued under the Internal Revenue Code. Accordingly, it is appropriate that the definition of "distilled spirits" in § 17.11 be consistent with the definition of that term in the Internal Revenue Code (26 U.S.C. 5002(a)(8)). Other regulations under the Internal Revenue Code use similar or identical definitions of "distilled spirits." (See, for example, 27 CFR Part 19, Distilled Spirits Plants.)

Current regulations in § 197.5 define "distilled spirits" to include only such spirits as have been "fully taxpaid or tax determined at the distilled spirits rate." The revised definition in § 17.11 is the same as the current one except for removal of that qualifying phrase. When taxpaid or tax determined distilled spirits are specifically intended in part 17, the terms "taxpaid spirits" or "taxpaid distilled spirits" are used. (See also the new definition of "taxpaid" in § 17.11.)

Finally, with respect to the new language in § 17.161 that was questioned by this commenter, ATF sees no need for a transition period before its implementation, because the only substantive change brought about by the new language is liberalizing. That substantive change makes it clear that ordinary business records are adequate for regulatory purposes if they contain the required information. Other new language in § 17.161 does not impose a substantive requirement, but simply spells out the purposes of records ("to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim").

3. A third commenter pointed out what appeared to him to be contradictions in the proposed regulations. However, the apparent contradictions were actually the result of misunderstanding. In one instance, the commenter confused the terms "eligible for drawback" and "subject to drawback." These terms are closely related but are by no means synonymous. The first refers to spirits that have not yet been used in nonbeverage products, while the second refers to spirits that have been so used. In order to prevent further confusion of this sort in the future, a definition of "subject to drawback" is added in § 17.11 of this proposed rule. (Notice No. 634 already contained a definition of "eligible for drawback.")

Another point of confusion concerned the difference between spirits contained in an intermediate product and spirits consumed in the manufacturer of such a product. Spirits contained in an intermediate product are eligible for drawback, and become subject to drawback when the intermediate product is used in the manufacture of a nonbeverage product. However, spirits consumed in the manufacture of an intermediate product (which are not contained in that product when completed) never become subject to drawback. Drawback cannot be claimed on such spirits, for two reasons—one legal and the other practical. The legal reason is that such spirits were never used in the manufacture of a nonbeverage product, as required by 26 U.S.C. 5134. The practical reason is that the latitude given to manufacturers with respect to intermediate products would make keeping records of such consumed spirits exceedingly difficult or impossible. (However, if a manufacturer chooses to give up some of that latitude, by treating the intermediate product as an unfinished nonbeverage product, then the consumed spirits may be included in a drawback claim; see the discussion later in this preamble concerning "Self manufactured ingredients optionally treated either as intermediate products or as unfinished nonbeverage products.")

4. A fourth commenter took issue with the standard used by ATF to determine whether to grant drawback of tax on spirits used in nonbeverage products. He questioned the standard that products produced with spirits must be "unfit for beverage use." The commenter asked that this standard be changed to "sale and use for [non]beverage purposes."

This commenter's requested change cannot be adopted in regulations, because the standard that must be met in order to receive drawback is expressly stated in the law. Drawback may be granted only for "distilled spirits on which the tax has been determined, [used] in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are *unfit for beverage purposes*" (emphasis added). See 26 U.S.C. 5131(a).

Differences From Notice No. 634

For the most part, the proposed regulations set forth in this document are identical with those that were published in Notice No. 634. However, there are some differences. Those differences are described and explained below.

1. Incorporation By Reference

Current regulations contain § 197.3, which incorporates several pharmaceutical publications by reference. (The publications are the National Formulary (N.F.), the United States Pharmacopoeia (U.S.P.), and the Homeopathic Pharmacopoeia of the United States (H.P.U.S.).) This incorporation was thought to be necessary because of the mention of those publications in §§ 197.5, 197.6 and 197.109. However, informal consultation with the Office of the Federal Register has led to the conclusion that the mention of those publications in this proposed rule (§ 17.132) is not of such a nature as to require a formal incorporation by reference. Although § 17.132 makes a "reference" to the N.F., U.S.P., and H.P.U.S., there is no "incorporation" of them into the regulations. There is merely an

authorization, for manufacturers who so choose, to utilize formulas from those publications as approved formulas without the necessity of submitting ATF Form 5530.5. Accordingly, § 17.3 as proposed in Notice No. 634 (which corresponded to current § 197.3) has been deleted.

2. Signature Authority

Proposed new § 17.6, generalized from the last sentences of current §§ 197.30 and 197.67(a), states the rule as to when evidence of signature authority is required.

3. Time for Payment of Special Tax

A sentence has been added to proposed § 17.24 in order to clarify when a payment of special tax is considered to be late. Under 26 U.S.C. 5131, special tax is a prerequisite for drawback eligibility. Therefore, no penalty will be imposed as long as special tax is paid before completion of final action on the claim.

4. Reincorporation

A new proposed § 17.77 has been added, stating that when an existing corporation or corporations are reorganized into a new corporation, a new special tax must be paid. This new section is similar to regulations for liquor dealers in § 194.163. Although § 17.77 states the general rule, there may be exceptions. For instance, ATF has ruled that a reorganization under 26 U.S.C. 368(a)(1)(F), consisting of a mere change in identity, a form, or place of organization of one corporation, however effected, does not require a new special tax. If there is any question as to whether a new special tax is required, the regional director (compliance) should be consulted.

5. Adoption of Predecessor's Formulas

The proposed method for adoption of a predecessor's formulas (for continued use at the same plant, when its ownership changes) has been slightly modified in § 17.125. As proposed in Notice No. 634, the adoption in such circumstances would have been accomplished by filing a notice of adoption listing only the serial numbers of the adopted formulas. (Current regulations in § 197.99 require the notice to list the serial numbers, names, and dates of approval.) Since the name of the formula is necessary for verification and to detect unauthorized alteration, this proposed rule would require the notice of adoption to list the adopted formulas by name and serial number. This would still be less burdensome than current regulations. Further, since copies of the articles of incorporation or other documents are necessary to prove the change of ownership, a sentence has been added to § 17.125(a) to mention this general requirement.

6. Adoption of Manufacturer's Own Formulas From Another Plant

Adoption of a company's own formulas for use at another of its plants (including adoption by a parent company of formulas of its wholly owned subsidiary, and vice versa) was proposed in Notice No. 634 and is also proposed in this notice. However, Notice No. 634 proposed that the procedure for this type of adoption be the submission of a copy of the adopted formula to the regional director (compliance) of the region(s) in which the additional plant(s) where the formulas would be used are located. Such a procedure would present problems, because that ATF official would not have access to the original formula for comparison, and the procedure also did not provide for submission of an additional copy for the ATF Laboratory. Therefore, this proposed rule provides that the adoption procedure, when a formula is adopted at a plant other than the one where it was originally approved, shall be the submission of a letterhead notice to the ATF Laboratory, accompanied by two photocopies of the formula to be adopted and some evidence of the relationship between the plants. After verifying the formulas, the ATF Laboratory will forward the notice to the regional director (compliance). As a precaution, the adopting plant is required to reference the notice in its first claim relating to the adopted formula(s). (See § 17.125(b).)

7. Liquor-Filled Candies

A paragraph has been added in proposed § 17.133, stating ATF's standing policy that candies with alcoholic fillings may be regarded as nonbeverage products only if the fillings meet the requirements for alcoholic sauces, as stated in § 17.133(a). Since some States may prohibit or restrict the manufacture or sale of liquor-filled candies, a sentence has been added in the introductory text of § 17.133, cautioning applicants that formula approval does not authorize violation of State law.

8. Supporting Data

Notice No. 634 proposed a simplification of the supporting data required to accompany claims. Information not necessary to the processing of drawback claims was proposed to be eliminated. For the most part, ATF still intends to implement this proposal. However, informal consultation with the Office of Management and Budget indicated that it would be better to prescribe an ATF form than to publish a recommended format for the required supporting data in regulations, as proposed in Notice No. 634. In accordance with the proposals in that notice, the new ATF form will simplify the distilled spirits account and eliminate detailed information on receipt of spirits, production and use of intermediate products, and use of finished products. The new form will be numbered "ATF F 5530.8" and titled "Supporting Data for Nonbeverage Drawback Claims."

As a result of comments from ATF personnel, the new ATF form will reflect the following changes from the supporting data format proposed in Notice No. 634:

(a) Information about the place of origin of Puerto Rican and Virgin Islands spirits and other imported rum will be required, because ATF needs this information in order to implement the Caribbean Basin Economic Recovery Act (Pub. L. 98–67, Title II).

(b) A separate reporting of spirits "on hand" and "in process" will be required (as under current regulations), because it would not be practicable to take inventory of spirits "in process."

(c) The alcohol content of finished products will be required (as under current regulations), in order to provide assurance against unauthorized formula changes, in view of the fact that usage of ineligible alcohol will not be shown (except for recovered alcohol). This change will also make the new form usable by persons claiming drawback on nonbeverage products brought into the U.S. from Puerto Rico and the Virgin Islands (under 27 CFR part 250).

(d) The kind of spirits used in each nonbeverage product will be required (as under current regulations), as a means of detecting the use of spirits that may be subject to a reduced effective tax rate, and verify formula compliance.

(e) Finally, since some manufacturers use spirits of more than one kind (e.g. alcohol and rum), they may prefer to submit separate accounts for each kind. The new AFT form will specifically permit that (but not require it).

Proposed regulations pertaining to the new form are in § 17.147. The form itself is printed for public comment at another place in this issue of the **Federal Register**, in a notice published by the Department of the Treasury entitled "Public Information Collection Requirements Submitted to OMB for Review."

Instructions to the new form will reflect the different requirements for

domestic manufacturers and for claimants bringing nonbeverage products into the U.S. from Puerto Rico and the Virgin Islands under 27 CFR part 250. Another change relating to claimants under part 250 will require all of them to file claims with the Chief, Puerto Rico Operations, rather than with the regional director (compliance) of the region where the products are landed. This will centralize the operation and prevent inadvertent filing of duplicate claims. It is understood that all such claimants are, in fact, currently filing their claims with the Chief, Puerto Rico Operations. (See the proposed amendments to 27 CFR 250.173 and 250.309.)

9. Evidence of Effective Tax Rate

A proposed new provision in § 17.163 would require manufacturers purchasing distilled spirits from wholesale or retail liquor dealers to obtain evidence of the effective tax rate paid on spirits other than alcohol, grain spirits, neutral spirits, distilled gin, and straight whisky. (Notice No. 634 already proposed that evidence of effective tax rate be obtained by manufacturers purchasing distilled spirits from distilled spirits plants.) The added burden of the new requirement will be small, since the great preponderance of nonbeverage drawback is claimed on alcohol, grain spirits, or neutral spirits. The new requirement is necessary, because spirits to which the requirement applies may contain wine and/or flavoring material that brings the effective tax rate below the normal distilled spirits rate (currently $13.50 per proof gallon). If so, the manufacturer and ATF need to know it, since the drawback rate is $1 less than the effective tax rate. (See discussion below concerning Pub. L. 96–598). If the required evidence is not obtained, drawback will only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

10. Batch Records: Usage of Spirits

Notice No. 634 would have required that proof gallon of spirits used be recorded for each production batch of nonbeverage and intermediate product. This could be an unnecessary burden on a manufacturer who keeps records in pounds. Therefore, this proposed rule (§ 17.164) would require batch records to show only the quantity of spirits used, measured by either weight or volume. The proof or alcohol percentage by volume of the spirits must also be shown. A similar liberalization is proposed for records of recovered alcohol (see § 17.168).

11. Batch Records: Tests of Alcohol Content

Notice No. 634 proposed, in § 17.164(b), that the alcohol content be recorded for each batch of product produced. It was not clear whether this would have entailed an analytical test of alcohol content for each batch. Such a requirement would have been quite burdensome and generally unnecessary. Therefore, this proposed rule would only require the manufacturer to test the alcohol content of nonbeverage products "at representative intervals." This requirement is left deliberately vague, because the appropriate interval will vary to a great degree depending on the type of product and the frequency with which it is manufactured. The purpose of testing alcohol content is to verify the accuracy of the formula and monitor compliance with it. If a manufacturer feels unsure of how frequently alcohol content should be tested to accomplish this purpose for a particular product, advice may be requested from ATF. Whenever the manufacturer does make a test, the results must be recorded.

12. Batch Records: Ingredient Names

To enable an ATF officer to compare the ingredients used in a batch with the ingredients listed in the product's formula, this document proposes to require that batch records refer to ingredients by the same names as are used for them in the product's formula. Synonymous names may additionally be shown (§ 17.164(c)).

13. Discontinuance of Business

A proposed requirement has been added in § 17.187, that ATF be notified when a manufacturer permanently discontinues business. This will enable ATF to manage its files, and is reasonable in view of the conditional exemption from basic permit and special (occupational) tax requirements for the sale of alcohol remaining on hand.

14. Changes Made By Recent Treasury Decisions

Notice No. 634 reflected the changes made by T.D. ATF-251 (52 FR 19311), relating to the transfer of certain administrative functions from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms. This proposed rule adds conforming changes to the following sections in 27 CFR part 70, which were added by that Treasury decision: §§ 70.321, 70.411, and 70.414. (The renumbering of these sections by T.D. ATF-301, 55 FR 47604, is also reflected.)

In addition, this document reflects the changes made by T.D. ATF-271, relating to the increase in the special tax rate. Sections affected by these changes are: §§ 17.21, 17.22, 17.24, 17.31, 17.32, and 17.41–17.43. Conforming changes are made in certain sections of 27 CFR part 250 that were amended or added by T.D. ATF–263, relating to drawback for nonbeverage products from Puerto Rico or the Virgin Islands. Sections affected by these conforming changes are: §§ 250.51, 250.171, 250.172, 250.307, and 250.308.

T.D. ATF–297 implemented section 6 of Public Law 96–598, effective January 1, 1980, which added 26 U.S.C. 5010. This section of law allows distilled spirits tax credit for certain wines and flavors contained in a distilled spirits product. Manufacturers of nonbeverage products may be affected by this credit, because drawback is allowed at $1 less than the rate at which tax was paid. The wine and flavors credit, by reducing the rate at which tax was paid, also reduces the rate at which drawback is allowed. The following sections in part 17 are affected by this change: §§ 17.11 (definition of "effective tax rate" and revised definition of "distilled spirits"), 17.141, 17.146(b), 17.147, 17.162–17.164, and 17.167.

In part 19, T.D. ATF–297 added § 19.780, which requires a record of shipment to accompany spirits shipped from a distilled spirits plant to a manufacturer of nonbeverage products. So that the manufacturer may use this record to meet the requirements of §§ 17.162 and 17.163, this document proposes to amend § 19.780 to require the record to specify the contents of each container in the shipment.

Other Changes from Previous Regulations

Many changes from current regulations, which were proposed in Notice No. 634, are also proposed in this final rule without substantial modification. Such proposed changes are described below:

1. Adoption of Rulings

The holdings of certain Revenue Rulings and ATF Rulings are reflected in the proposed regulations, as follows: Rev. Rul. 55–689, 1955–2 CB 729 (§ 17.187); Rev. Rul. 56–239, 1956–1 CB 715 (§ 17.135); Rev. Rul. 56–314, 1956–2 CB 1023 (§ 17.137); Rev. Rul. 56–335, 1956–2 CB 1024 (§ 17.181); Rev. Rul. 56–336, 1956–2 CB 1023 (§ 17.182); Rev. Rul. 56–367, 1956–2 CB 1026 (§ 17.135(b)(2)); Rev. Rul. 56–394, 1956–2 CB 1021 (§ 17.152(c)); Rev. Rul. 56–395, 1956–2 CB 1025 (§ 17.186); Rev. Rul. 58–350, 1958–2 CB 974 (§ 17.136); Rev. Rul. 63–87, 1963–1 CB 384 (§§ 17.11: definition of "food

products," and 17.133(d)); Rev. Rul. 69–138, 1969–1 CB 327 (§§ 17.126(b) and 17.152(a), (c), and (d)); ATF Rul. 73–1, 1973 ATF CB 85 (§ 17.133(b)); ATF Rul. 74–2, 1974 ATF CB 27 (§ 17.76); ATF Rul. 76–17, 1976 ATF CB 85 (§§ 17.151 and 17.152(b)); ATF Rul. 76–19, 1976 ATF CB 86 (§§ 17.169 and 17.185); ATF Rul. 77–27, 1977 ATF CB 165 (§ 17.122); and ATF Rul. 82–7, 1982–2 QB 46 (§ 17.11: definition of "medicines").

Rev. Rul 57–369, 1957–2 CB 948, will be adopted in the instructions to the revised ATF Form 5530.5 (formerly Form 1678; see discussion below). Rev. Rul. 58–317, 1958–1 CB 586, is not reflected in the regulations; it is obsolete since iso-alcoholic elixir has been removed from the National Formulary. Rev. Rul. 58–428, 1958–2 CB 975, is also not reflected in the regulations, because the repeal of 26 U.S.C. 5082 has removed its authority. The holding of ATF Rul. 81–8, 1981–4 QB 24, has been modified in § 17.183 (see discussion below). Revenue Procedure 64–32 (1964–2 CB 951) will be replaced by the new supporting data form (ATF Form 5530.8), per § 17.147.

2. Form Number Changes

The prescribed form entitled "Formula and Process for Nonbeverage Products" is being revised and renumbered from 1678 to 5530.5. This will not require resubmission of any formulas previously approved on Form 1678. Similarly, the form number of the "Bond for Drawback Under 26 U.S.C. 5131" is being changed from 1730 to 5530.3, but this will not require resubmission of any bonds previously approved.

3. Alternate Methods or Procedures

A new section (§ 17.3) has been added to provide for the employment of alternate methods or procedures, if approved by the Director pursuant to a showing of good cause.

4. Delegations of Authority

Authority to perform certain functions under part 17 may be delegated from time to time by the Director, through delegation orders, to subordinate officials. This possibility is reflected in the definition of "Director" in § 17.11 by addition of the words "or his or her delegate." For reasons of efficiency the ATF Alcohol and Tobacco Laboratory is specified as the recipient of certain documents, such as formulas, in §§ 17.121, 17.122, 17.126, 17.131, 17.132, and 17.136. Accordingly, a new definition of "Alcohol and Tobacco Laboratory," giving its address, is provided in § 17.11. The existing delegation, to the regional director (compliance), of authority to approve or disapprove claims is also codified in the proposed regulations (§ 17.142).

5. New Definitions

For clarity, some new definitions are added in § 17.11. Besides those mentioned elsewhere in this preamble, there are new definitions of "approved," "CFR," "eligible," "month," "person," "proof gallon," "quarter," "recovered spirits," and "this chapter." With respect to the definitions of "month" and "quarter," claimants desiring to use slightly different time periods would be allowed to apply under § 17.3. (Existing approvals would remain in effect.) Certain definitions in previous regulations have been deleted as unnecessary, and the definitions of "used" and "time distilled spirits are used" are in regulations §§ 18.151 and 17.152.

6. Retention of Special Tax Stamps

Current regulations in § 197.47a do not specify a time period for retention of special tax stamps. These proposed regulations (§ 17.55) make the retention period the same as for other required records and documents (generally 3 years). The retention period for the list of multiple business locations, which is 2 years under the current regulations in § 197.28, is proposed to be made the same as for other documents (§ 17.31).

7. Amount of Bond for Monthly Claims

Current § 197.107 was issued in 1955, when ATF practice was to conduct frequent inspections of drawback claimants. The bond requirement was worded in such a way that if a monthly claimant were inspected more frequently than quarterly, the bond needed only to be sufficient to cover the drawback claimed between inspections. At present, on-site inspections are conducted much less frequently. No claimant is regularly inspected as frequently as quarterly. Therefore, the concept that the amount charged against a bond might be reduced within a quarter, due to frequent inspections, has become obsolete. These proposed regulations reflect this in § 17.102. Bonds for monthly claims must be sufficient to cover the total amount of drawback that will be claimed during any quarter. It is not anticipated that this change will affect the required bond coverage of any current monthly claimant.

8. Time for Filing Formulas

Language currently in § 197.95, respecting time for filing formulas, is proposed to be revised in § 17.121 to express more clearly the statutory requirement of 26 U.S.C. 5131–5134. Both formula and claim are required to be filed within the statutory period of "6 months next succeeding the quarter in which the distilled spirits covered by the claim were used" (26 U.S.C. 5134(b)). However, if there is any doubt about the eligibility of a product for drawback, it is preferable that the formula be filed and approved before commencement of manufacture.

9. Formulas For Use at Multiple Plants

As proposed in Notice No. 634, the revised formula form (ATF F 5530.5) will permit a manufacturer to file a single formula for use at more than one plant, if the plants at which the formula is to be used are listed on the form. See § 17.121(a). The proposed revisions to the form are pictured at another place in this issue of the **Federal Register**, in a notice published by the Department of the Treasury entitled "Public Information Collection Requirements Submitted to OMB for Review."

10. Formulas for Intermediate Products

Current regulations do not explicitly require the submission of intermediate product formulas, though generally they have been submitted anyway. Since ATF needs to know all ingredients that will enter into the finished nonbeverage product, these proposed regulations (§ 17.126) require the submission of formulas on ATF Form 5530.5 (formerly 1678) for intermediate products, unless the formula for an intermediate product is written as part of the approved formula for the nonbeverage product(s) in which the intermediate product will be used.

11. Self-Manufactured Ingredients Optionally Treated Either as Intermediate Products or as Unfinished Nonbeverage Products

An intermediate product may freely be used in any nonbeverage product whose formula calls for its use, and may be accumulated and kept "on hand" indefinitely. Consequently, it is common for several batches of an intermediate product to be combined in one storage receptacle, and for less (or more) than a full batch of such a product to be used to produce a batch of a finished nonbeverage product. These common practices are for the convenience of manufacturers. However, as a result of these practices, if spirits are consumed or recovered in the manufacture of the intermediate product, it would be difficult or impossible to calculate the correct proportion of such spirits attributable to a given batch of finished nonbeverage product. For this reason, the current regulations (§§ 197.118 and 197.119) generally do not permit

drawback to be claimed on spirits consumed or recovered in the manufacture of intermediate products. (In the case of such recovered spirits, drawback may be claimed, but only if and when the spirits are subsequently reused in the manufacture of a nonbeverage product.) These restrictions are necessary for protection of the revenue, and in most cases they present no difficulty to manufacturers.

However, in some instances, the manufacture of an intermediate product requires consumption of significant quantities of spirits that are not ultimately contained in that intermediate product, and the inability to claim drawback on such spirits has posed a hardship to the manufacturers. Therefore, such manufacturers have been permitted to resubmit their formulas to show production of the intermediate product as an integral part of the formula for the related nonbeverage product. If this is done, the former "intermediate product" is henceforth regarded as an unfinished nonbeverage product; consequently, spirits necessarily consumed (or recovered) in its manufacture are regarded as consumed (or recovered) in the manufacture of a nonbeverage product and are subject to drawback.

This procedure avoids the hardship to manufacturers previously described. It also protects the Federal revenue, because, under the procedure, each batch of the unfinished product is restricted to use in a specific batch of a predetermined nonbeverage product and must be so used within the time period specified in the approved nonbeverage formula.

In order to make the availability of this procedure known to manufacturers who necessarily consume (or who recover) spirits in the manufacture of intermediate products, the procedure is described in §§ 17.127 and 17.185 of these proposed regulations. The regulations offer manufacturers the option of designating their self-manufactured alcoholic ingredients as either "intermediate products" or "unfinished nonbeverage products." There are advantages and disadvantages that would go with either choice.

The advantage of designating an ingredient as an "unfinished nonbeverage product" is that spirits recovered or consumed in the manufacture of the ingredient are subject to drawback in the same way as other spirits recovered or consumed in the manufacture of nonbeverage products. The disadvantages of this designation are:

(1) Each batch of the ingredient must be used within a limited time in a specific batch of a predetermined nonbeverage product. (The production of the ingredient and of the finished nonbeverage product are recorded in a single, unified batch record.)

(2) The ingredient cannot be transferred as an intermediate product under proposed § 17.185(b). (This latter restriction is due to the necessity of a single, unified batch record, which must be maintained at the place of production.)

Conversely, the advantages of designating an ingredient as an "intermediate product" are:

(1) Several batches may be accumulated, stored indefinitely, and used indiscriminately in the manufacture of any nonbeverage product whose formula calls for their use.

(2) Ingredients designated as "intermediate products" may be transferred to another branch or plant of the same manufacturer under §§ 17.169 and 17.185.

(3) For manufacturers who already have intermediate product formulas on file, another advantage of choosing the "intermediate product" designation is that no new formula or procedural changes would be required.

The disadvantage of that designation is that spirits consumed or recovered in production of the intermediate product may not be claimed for drawback.

12. Subpart U of 27 CFR Part 170

Subpart U of part 170 provides exemptions from special tax and qualification requirements for manufacturers and sellers of certain products that are unfit for beverage use. Subpart U predates nonbeverage drawback and was promulgated when the requirements relating to processing of distilled spirits were quite different from what they are today. Consequently, subpart U of part 170 has been thoroughly redrafted. Some material is proposed to be eliminated, either as unnecessary or as covered by other regulations. Material related exclusively to drawback manufacturers has been incorporated in the new part 17. The remaining material has been relocated into subpart D of part 19. Conforming amendments have been made in subpart C of part 194. Former § 170.613(a)(6) ("Salted wines") has already been incorporated into 27 CFR part 24 by T.D. ATF-299 (55 FR 24974). Sections in part 17 containing language from subpart U of part 170 are: §§ 17.132, 17.133, and 17.168.

13. Submission of Quantitative Formulas

The purpose of this proposed change is to strengthen requirements respecting submission of formulas for nonbeverage drawback products. Current regulations allow the use of formulas prescribed by the United States Pharmacopeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) without the prior filing and approval of quantitative formulas. This procedure has been allowed because of the descriptive nature of these formulas and their consistency over the years. At present, however, the N.F. and U.S.P. are deleting their requirements for specific quantities of ingredients in some of their formulas, except for the active ingredients. Such non-descriptive formulas are not adequate for regulatory purposes, since alcohol is usually a vehicle rather than an active ingredient and is therefore not stated as a specific quantity within such formulas. Drawback of distilled spirits tax under 26 U.S.C. 5134 is claimed and allowed on exact amounts of alcohol used in the manufacture of nonbeverage products according to the quantity specified in the approved formula.

Therefore, the proposed regulations are worded so that ATF may require submission of quantitative formulas on ATF Form 5530.5 (formerly 1678), Formula and Process for Nonbeverage Products, for preparations which appear in the N.F., U.S.P., or H.P.U.S. whenever it is determined that such submission is necessary to maintain control over alcohol used and to insure that the products meet the statutory requirements for drawback eligibility. It is expected that the list of preparations for which approval of quantitative formulas will be required under this proposal (if it is adopted) will be published as an ATF ruling in the ATF Bulletin. The section affected by this change is § 17.132. Current requirements are found or referred to in §§ 197.5 (definition of "time distilled spirits are used"), 197.95, 197.96, 197.109(d), and 197.115.

14. U.S.P., N.F., and H.P.U.S. Preparations; Drawback Approval

Current regulations do not state that preparations listed in the U.S.P., N.F., and H.P.U.S. are automatically approved for drawback, though some industry members have assumed so due to the exemption of such products from the formula filing requirement in § 197.96. To clarify this issue so that manufacturers may properly plan, these

proposed regulations state that formulas listed in the U.S.P., N.F. and H.P.U.S. are approved for drawback, except as otherwise provided by regulation or ATF ruling. However, alcohol, U.S.P. (including dehydrated alcohol and dehydrated alcohol injection); alcohol and dextrose injection, U.S.P.; tincture of ginger, H.P.U.S.; and all H.P.U.S. preparations made at dilutions higher than "4X" (one part in 10,000) are declared fit for beverage use. (See § 17.132.)

15. H.P.U.S. Preparations

Current regulations exempt preparations listed in the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) from the requirement for filing of formulas (§ 197.96), but this exemption does not entail automatic approval for drawback. The statutory standard of "unfit for beverage purposes" remains and must be enforced (26 U.S.C. 5131(a)). Manufacturers of H.P.U.S. products, in accordance with homeopathic practice, often dilute the active ingredients in large quantities of alcohol and water, so that the resulting product is fit for beverage purposes. Such products cannot be approved for drawback. The ATF Laboratory has determined that even for H.P.U.S. products containing certain poisonous materials, dilutions of greater than "4x" (i.e. one part in 10,000) would be fit for beverage use. Therefore, it has been ATF's position to deny drawback for H.P.U.S. products diluted to greater than "4x." These proposed regulations reflect this position in § 17.132(b). At the same time, the proposed regulations would also permit manufacturers of dilute H.P.U.S. products to contest the presumption of beverage fitness by submitting appropriate evidence that the product is unfit for beverage use.

16. Determination of Beverage Unfitness

Proposed new § 17.134 clarifies the procedure used by ATF to determine whether any product, for which a formula is submitted for approval, is fit or unfit for beverage use. It is hoped that manufacturers will utilize this procedure themselves to identify products that are clearly fit for beverage use. The last sentence of § 17.134 (adapted from current §§ 170.615 and 170.618) makes it clear that drawback approval may be revoked if a product is found being used or sold for beverage purposes.

17. Manufacturers Who Are Also Users of Denatured Alcohol

Pursuant to § 5214(a)(1) of the Internal Revenue Code of 1986, no tax is paid on denatured spirits. Therefore, it would be conducive to fraud on the revenue for a single manufacturer to produce the same product out of both specially denatured alcohol and taxpaid alcohol on which drawback may be claimed. Proposed new § 17.135(a) prohibits this practice.

18. Compliance With Food and Drug Administration Requirements

Proposed new § 17.136 specifies that products shall not be considered to be medicines, medicinal preparations, food products, flavors, or flavoring extracts if they would violate the bans or restrictions of the U.S. Food and Drug Administration applicable to such products. This reflects a longstanding ATF policy. See Rev. Rul. 58–350, 1958–2 C.B. 974, and the following Industry Circulars: 61–2, 62–33, 65–4, 70–12, 72–8, 72–28, 72–29, 73–6, and 76–17. ATF will not consider a product approved for drawback if FDA has banned the product or any of its ingredients. Authority for this regulation comes from 26 U.S.C. 5131, which limits drawback to products which are medicines, medicinal preparations, food products, flavors, or flavoring extracts, and from 26 U.S.C. 5132, which authorizes ATF to prescribe reasonable regulations for the enforcement of that limitation.

19. Claims for Credit by Manufacturers of Nonbeverage Products

There are some business entities that are both manufacturers of nonbeverage products and proprietors of distilled spirits plants. For such entities, it may be more convenient to claim nonbeverage drawback in the form of a credit which may be used to offset distilled spirits taxes owed by the distilled spirits plant. Therefore, proposed § 17.142(b) would permit such a procedure.

20. Gains in Spirits Received or On Hand

If a manufacturer's gauge of spirits received in a tank car or tank truck differs from the taxpayment gauge by more than 0.2%, the receiving gauge must be recorded in the manufacturer's records as the quantity received (current regulations § 197.130a(a); proposed regulations § 17.162(d)). This rule is based on the assumption that if the discrepancy is that great, the receiving gauge is more likely to be accurate. However, the current regulations do not explicitly require that if the amount of spirits received exceeds the amount taxpaid, the difference must be deducted from the manufacturer's claim. Nevertheless, such deduction has been required by ATF inspectors, who have similarly required deduction for any gain disclosed by physical inventory of distilled spirits. Deduction is appropriate in these circumstances, since a gain indicates either receipt of ineligible (nontaxpaid) spirits or an excessive claim in a previous period. Therefore, the proposed regulations state that manufacturers shall deduct, from the drawback claimed for the applicable period, an amount reflecting any inventory gain of eligible spirits and any excess of spirits received over the amount that was taxpaid (See §§ 17.147(d), 17.162(d), and 17.167(a).)

21. Public Law 98–369

This document reflects certain changes made by Public Law 98–369 (Deficit Reduction Act of 1984). Those changes are: (1) Addition of 26 U.S.C. 5206(d) (relating to obliteration of marks) and (2) imposition of a $1,000 penalty for nonfraudulent violations of drawback law and regulations, unless the manufacturer establishes reasonable cause for a violation. Sections affected are: §§ 17.148 and 17.184.

With respect to the $1,000 penalty, the statute requires that the penalty be imposed "for each failure to comply" with law or regulations. For products listed on a claim, this means that a separate penalty could be imposed for each product with respect to which there was noncompliance. For example, if products were not manufactured according to formula, but were still unfit for beverage use, a $1,000 penalty could be imposed for each nonconforming product. If the amount claimed on any such product is less than $1,000, the penalty is limited to the amount claimed.

Recordkeeping violations can also result in imposition of a penalty for each separate product. However, if the violations are so serious that they prevent the manufacturer from establishing that a product was unfit for beverage use, or the quantity of the product that was made, then the penalty provision would not apply. Each claim must be handled on its own merits, and the burden of proving entitlement to drawback is always on the manufacturer. If this burden is not met with respect to any product, the claim for drawback relating to that product would be denied.

The preceding comments also apply to products manufactured without submission of a formula. If the manufacturer can sustain the burden of proof, the claim would be approved subject to the penalty. However, without a formula, it is unlikely that the burden could be sustained, other than by examination of batch records. ATF is not obliged to send an inspector to examine batch records when a

manufacturer refuses to comply with the requirement to submit a formula.

With respect to timely filing, a late-filed claim or formula counts as just one "failure to comply." So if the only noncompliance is lateness in filing a claim, the maximum penalty would be $1,000. Late-filed formulas result in a separate penalty for each late formula. Special tax paid subsequent to final action on a claim also results in a $1,000 penalty. (It should be noted that in no case will a claim be paid more than 6 years after the quarter in which the products were manufactured, due to the statute of limitations of 28 U.S.C. 2401.)

Finally, the penalty provision does not apply in the case of fraud. Fraud is considered to be a deliberate violation with intent to deceive. If there is fraud, the entire claim may be denied, and the manufacturer may be subject to other civil and criminal penalties as well.

22. Changes in Recordkeeping Requirements

Certain items that are proposed to be deleted from the supporting data have been incorporated into the records required by subpart H to be maintained at each nonbeverage premises. Certain currently required records which are duplicative of the information provided by the supporting data have been deleted from the proposed subpart H. The holding of Industry Circular 79–5 with respect to records of raw materials and finished products has been clarified and incorporated in the proposed regulations (see §§ 17.164 and 17.165). Recordkeeping requirements for recovered alcohol, currently in § 170.617(c), are incorporated in new § 17.168. New language is added in § 17.161 to emphasize the important point that a manufacturer's normal business records (including invoices and cost accounting records) are acceptable for ATF purposes if they contain the required information. ATF anticipates that, in most situations, no records besides these normal business records need be maintained for purposes of compliance with the proposed regulations.

23. Physical Inventories

Current regulations do not clearly specify the frequency of physical inventories, although arguably §§ 197.116–119 require such inventories every claim period for distilled spirits, recovered spirits, and intermediate products. These proposed regulations specify that the "on hand" figures in the supporting data must be verified by physical inventories at the end of each period for which a claim is filed. The proposed regulations would also authorize the regional director (compliance) to require physical inventories of nonbeverage products and raw ingredients whenever such inventories are deemed necessary to ensure compliance with regulations. (See § 17.167.)

24. Records Retention

Proposed § 17.170 (corresponding to current § 197.133) would extend the records retention period from 2 years to 3 years, for consistency with other ATF regulations. This change will ensure the availability of records to support any action that may be taken within the period of the statute of limitations prescribed by 26 U.S.C. 6531. This section of law prescribes a 3-year statute of limitations for most offenses; but for certain offenses involving fraud or willful violation, the statute of limitations is 6 years. Therefore, as in other ATF regulations, the proposed regulations contain a provision that would permit the regional director (compliance) to require a manufacturer to retain his records for a longer period, not to exceed an additional 3 years.

25. Inspection of Records

In addition to the records specifically required by regulations, ATF officers are authorized under 26 U.S.C. 5133 (as delegates of the Secretary) to inspect any records "bearing upon the matters required to be alleged" in drawback claims. This authority is reiterated in the proposed regulations in § 17.171.

In carrying out this authority, ATF will continue to protect proprietary information. For example, the production records in proposed § 17.164 do not require greater detail as to ingredients than is shown on ATF Form 5530.5. If some secret ingredients of a product are referred to in general terms, such as "essential oils," on Form 5530.5, then the required production record for that product would only need to show the quantity of "essential oils" used in the production of each batch. The production record would not have to specify the secret ingredients. If unusual circumstances should require an ATF officer to examine other records, such as master formulas that do specify the secret ingredients, § 17.171 does not provide authority for copies of such formulas to be made without the consent of the proprietor. (However, such copies could be required by the Director or a regional director (compliance) under § 17.123.)

The law, in 18 U.S.C. 1905 and 26 U.S.C. 7213, imposes criminal penalties on any ATF officer who makes unauthorized disclosure of confidential business information obtained in the course of his or her employment. Further restrictions on disclosure are found in 26 U.S.C. 6103, which generally prohibits unauthorized disclosure of returns and return information. "Returns" and "return information" in that section includes drawback claims and the records and reports which support them.

26. Disposition of Material From Which Alcohol Can Be Recovered

ATF Ruling 81–8 provided a liberalized procedure for the disposition of spent vanilla beans, under which they may be treated with any material that the manufacturer finds suitable to make recovery of potable alcohol impractical. The manufacturer is not required to obtain prior approval from ATF. In broadening this rule by these proposed regulations, to make it applicable to the disposition of any material from which alcohol can be recovered, ATF has concluded that prior approval should be obtained for the use of materials not previously approved.

Consequently, proposed § 17.183 lists materials that have already been authorized to be added to spent vanilla beans. No further authorization is needed for the use of these materials, when disposing of spent vanilla beans. However, approval of a written application is required (1) if other materials are proposed to be added to such beans, or (2) if other substances from which alcohol can be recovered are proposed to be disposed of. Manufacturers who may have received approval for the use of other methods of disposal not listed in § 17.183 may continue to operate under such approval.

DISTRIBUTION TABLE FOR PART 197

Former section	New section
Subpart A	
§ 197.1	§ 17.1
§ 197.2	§ 17.2
§ 197.3	Deleted.
Subpart B	
§ 197.5: (generally)	§ 17.11
§ 197.5: "Director of the Service Center".	Deleted.
"District Director"	Deleted.
"Time distilled spirits used".	§ 17.152(a)
Total annual use"	Deleted.
"Used"	§ 17.151
"Year"	Deleted.
Subpart C	
§ 197.25	§ 17.21 & § 17.22
§ 197.25a	§ 17.22
§ 197.26	§ 17.23
§ 197.27	§ 17.24
§ 197.28	§ 17.31

DISTRIBUTION TABLE FOR PART 197—Continued

Former section	New section
§ 197.29	§ 17.32
§ 197.29a(a)	§ 17.41
§ 197.29a(b)	§ 17.42
§ 197.29a(c)	§ 17.43
§ 197.30 (except last sentence).	§ 17.33
§ 197.30 (last sentence)	Covered by § 17.6.
§ 197.31	§ 17.34
Subpart D	
§ 197.40	§ 17.51
§ 197.40a	§ 17.52
§ 197.41	§ 17.54
§ 197.42	§ 17.53
§ 197.43	§ 17.61
§ 197.46	§ 17.62
§ 197.47	§ 17.63
§ 197.47a	§ 17.55
§ 197.48	§ 17.71
§ 197.49	§ 17.72
§ 197.50	§ 17.73
§ 197.51	§ 17.74
§ 197.52	§ 17.81
§ 197.53	§ 17.82
§ 197.54	§ 17.83
§ 197.57	§ 17.91
§ 197.58	§ 17.92
§ 197.59	§ 17.93
Subpart E	
§ 197.65	§ 17.101 (up to last sentence).
§ 197.66	§ 17.103
§ 197.67	§§ 17.105, 17.6
§ 197.68	§ 17.104
§ 197.69	§ 17.106
§ 197.70	§ 17.144 (2nd sentence).
§ 197.71	§ 17.101 (last sentence).
§ 197.72	§ 17.107
§ 197.73	§ 17.108
§ 197.75	§ 17.111
§ 197.76	§ 17.112
§ 197.77 (except last sentence).	§ 17.113
§ 197.77 (last sentence)	Covered by § 17.108 (last sentence).
§ 197.79	Covered by § 17.111.
§ 197.80	§ 17.114
Subpart F	
§ 197.95 (sentences 1–2, 6, 8–9).	§ 17.121
§ 197.95 (sentences 3 & 4).	§ 17.131
§ 197.95 (5th sentence)	§ 17.137
§ 197.95 (7th sentence)	§ 17.122
§ 197.95 (last sentence)	Will be covered by revised ATF Form 5530.5.
§ 197.96	§ 17.132(a)
§ 197.97	§ 17.123
§ 197.98	§ 17.124
§ 197.99	§ 17.125(a)
Subpart G	
§ 197.105	§ 17.141
§ 197.106 (up to proviso)	§ 17.142(a)
§ 197.106 (proviso, except next-to-last sentence).	§ 17.143
§ 197.106 (next-to-last sentence).	§ 17.146(b)

DISTRIBUTION TABLE FOR PART 197—Continued

Former section	New section
§ 197.107 (except first & last sentences).	§ 17.102
§ 197.107 (first & last sentences).	§ 17.144 (first & last sentences).
§ 197.108	§ 17.145
§ 197.109	§ 17.146(a)
§ 197.110	§ 17.147
§ 197.111	New supporting data form.
§ 197.111–113	§ 17.162(a)
§ 197.114	§ 17.162(b)
§ 197.115	§ 17.147 & new supporing data form.
§ 197.116 (except last sentence).	New supporting data form.
§ 197.116 (last sentence); also § 197.117 (2nd sentence), § 197.118 (2nd sentence), & § 197.119 (2nd sentence).	§ 17.176(a)
§ 197.117 (first sentence)	New supporting data form.
§ 197.117 (3rd & 4th sentences).	§ 17.153(b)
§ 197.117 (last sentence)	§ 17.153(c)
§ 197.118 (first sentence)	New supporting data form.
§ 197.118 (last sentence)	§ 17.153(a)
§ 197.119 (first sentence)	Deleted; covered by new supporting data form and § 17.164(b).
§ 197.119 (last sentence)	§ 17.155
Subpart H	
§ 197.130 (introduction)	§ 17.161 (first sentence).
§ 197.130(a)–(d)	Covered by § 17.162(a)–(c).
§ 197.130(e)–(g)	§ 17.164(b)
§ 197.130(h)–(j)	§ 17.166(a)
§ 197.130a(a)	§ 17.162(d)
§ 197.130a(b)	§ 17.164(d)
§ 197.130b	§ 17.163(a) & (c)
§ 197.131	§ 17.166(c)
§ 197.132 (except last clause).	§ 17.161 (from 2nd sentence to end).
§ 197.132 (last clause)	Covered by § 17.171.
§ 197.133 (except last sentence).	§ 17.170
§ 197.133 (last sentence)	§ 17.171

DERIVATION TABLE FOR PART 17

New section	Source
Subpart A	
§ 17.1	§ 197.1.
§ 17.2	§ 197.2.
§ 17.3	New.
§ 17.4	New.
§ 17.5	New.
§ 17.6	New (cf. last sentences of §§ 197.30 and 197.67(a)).
Subpart B	
§ 17.11: (generally)	§ 197.5.
"Alcohol & Tobacco Laboratory".	New.
"Approved"	New.
"CFR"	New.
"Effective tax rate"	New.

DERIVATION TABLE FOR PART 17—Continued

New section	Source
"Eligible"	New.
"Food products"	Rev. Rul. 63–87.
"Medicines"	ATF Rul. 82–7.
"Month"	New.
"Proof gallon"	New.
"Quarter"	New.
"Subject to drawback"	New.
"Taxpaid"	New.
Subpart C	
§ 17.21	§ 197.25.
§ 17.22	§ 197.25a.
§ 17.23	§ 197.26.
§ 17.24	§ 197.27.
§ 17.31	§ 197.28.
§ 17.32	§ 197.29.
§ 17.33	§ 197.30.
§ 17.34	§ 197.31.
§ 17.41	§ 197.29a(a).
§ 17.42	§ 197.29a(b).
§ 17.43	§ 197.29a(c).
Subpart D	
§ 17.51	§ 197.40.
§ 17.52	§ 197.40a.
§ 17.53	§ 197.42.
§ 17.54	§ 197.41.
§ 17.55	§ 197.47a.
§ 17.61	§ 197.43.
§ 17.62	§ 197.46.
§ 17.63	§ 197.47.
§ 17.71	§ 197.48.
§ 17.72	§ 197.49.
§ 17.73	§ 197.50.
§ 17.74	§ 197.51.
§ 17.75	New.
§ 17.76	ATF Rul. 74–2.
§ 17.77	New.
§ 17.81	§ 197.52.
§ 17.82	§ 197.53.
§ 17.83	§ 197.54.
§ 17.91	§ 197.57.
§ 17.92	§ 197.58.
§ 17.93	§ 197.59.
Subpart E	
§ 17.101	§§ 197.65 & 197.71.
§ 17.102	§ 197.107 (except first & last sentences).
§ 17.103	§ 197.66.
§ 17.104	§ 197.68.
§ 17.105	§ 197.67.
§ 17.106	§ 197.69.
§ 17.107	§ 197.72.
§ 17.108	§ 197.73.
§ 17.111	§§ 197.75 & 197.79.
§ 17.112	§ 197.76.
§ 17.113	§ 197.77.
§ 17.114	§ 197.80.
Subpart F	
§ 17.121	§ 197.95 (sentences 1–2, 6, 8–9).
§ 17.122	§ 197.95 (7th sentence) & ATF Rul. 77–27.
§ 17.123	§ 197 97.
§ 17.124	§ 197.98.
§ 17.125(a)	§ 197.99.
§ 17.125(b)	New.
§ 17.126(a)	New.
§ 17.126(b)	Rev. Rul. 69–138.
§ 17.127	New.
§ 17.131	§ 197.95 (3rd & 4th sentences).

DERIVATION TABLE FOR PART 17—Continued

New section	Source
§ 17.132(a)	§ 197.96.
§ 17.132(b)	§ 170.616.
§ 17.133	§ 170.613(a)(7)–(9), Rev Rul. 63–87 & ATF Rul. 73–1.
§ 17.134	New.
§ 17.135	Rev. Ruls. 56–239 & 56–367.
§ 17.136	Rev. Rul. 58–350.
§ 17.137	§ 197.95 (5th sentence) & Rev Rul. 56–314.
Subpart G	
§ 17.141	§ 197.105.
§ 17.142(a)	§ 197.106 (up to proviso) & ATF Order 1100.95A.
§ 17.142(b)	New.
§ 17.143	§ 197.106 (proviso, except next-to-last sentence.
§ 17.144	§§ 197.70 & 197.107 (first & last sentence).
§ 17.145	§ 197.108.
§ 17.146	§§ 197.106 (next-to-last sentence) § 197.109.
§ 17.147(a)	§ 197.110
§ 17.147(b)	§ 197.115 (last sentence).
§ 17.147 (c) & (d)	New.
§ 17.148	New.
§ 17.151	§ 197.11 ("Used").
§ 17.152(a)	§ 197.11 ("Time distilled spirits are used").
§ 17.152(b)	ATF Rul. 76–17.
§ 17.152(c)	Rev. Ruls. 56–394 & 69–138.
§ 17.152(d)	Rev. Rul. 69–138.
§ 17.153	§§ 197.117 (last three sentences) & 197.118 (last sentence).
§ 17.154	§ 197.11 ("Intermediate products").
§ 17.155	§ 197.119 (last sentence).
Subpart H	
§ 17.161	§§ 197.130 (introduction) & § 197.132 (except last clause).
§ 17.162(a)	§§ 197.112–113 & 197.130(a)–(d).
§ 17.162(b)	§§ 197.114 & 197.130(a)–(d).
§ 17.162(c)	New.
§ 17.162(d)	§ 197.130a(a).
§ 17.163 (a) & (c)	§ 197.130b.
§ 17.163(b)	New.
§ 17.164	§§ 197.130(e)–(g) & 197.130a(b).
§ 17.165	Industry Circular 79–5.
§ 17.166(a)	§ 197.130(h)–(j)
§ 17.166(b)	New.
§ 17.166(c)	§ 197.131.
§ 17.167(a)	§§ 197.116–119.
§ 17.167(b)	Industry Circular 79–5.
§ 17.168	§ 170.617(c).
§ 17.169	New.
§ 17.170	§ 197.133 (except last sentence).
§ 17.171	§ 197.132 (last two clauses), § 197.133 (last sentence) & Industry Circular 79–5.
Subpart I	
§ 17.181	Rev. Rul. 56–335.
§ 17.182	Rev. Rul. 56–336.
§ 17.183	ATF Rul. 81–8 (modified).

DERIVATION TABLE FOR PART 17—Continued

New section	Source
§ 17.184	New.
§ 17.185 (a) & (c)	New.
§ 17.185(b)	ATF Rul. 76–19.
§ 17.186	Rev. Rul. 56–395.
§ 17.187	Rev. Rul. 55–689.

Opportunity for Public Comment

Interested persons who wish to participate in the rulemaking process are invited to address written comments or suggestions to the Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, within 30 days after the date of publication of this notice in the **Federal Register**. Comments are particularly sought concerning records or other proposed requirements that go beyond what would normally be kept in the course of good business practice (except if such additional requirements are necessary for revenue protection).

For example, some information may be required by these regulations, or by forms prescribed under them, to be stated in proof gallons or other units of volume. These requirements are based on the law (26 U.S.C. 5001), which imposes distilled spirits tax on the basis of volumetric units in the English system. Manufacturers who keep records in pounds or other units may be able to apply for use of an alternate procedure under proposed § 17.3. ATF would appreciate any comments from such manufacturers regarding ways that these regulations could be made less burdensome for them.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, within the 30-day period. The request should include reasons why the commenter feels that a public hearing is necessary. However, the Bureau reserves the right to determine, in the light of all the circumstances, whether a public hearing should be held. Copies of the proposed changes and all public comments received are available for public inspection from 8:30 a.m. to 5 p.m. in Room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control numbers 1512–0078, 1512–0079, 1512–0095, 1512–0141, 1512–0188, 1512–0378, 1512–0379, 1512–0472, 1512–0492, and 1512–0500. The likely respondents and recordkeepers are businesses or other for-profit institutions, including small businesses or organizations.

The collection of information under control number 1512–0078 is in § 17.106. This information is required by ATF to obtain the surety's agreement to any changes in the terms of bonds. The collections of information under control number 1512–0079 are in §§ 17.6 and 17.105. This information is required when agents obtain authority to sign official documents on behalf of the principal.

The collections of information under control number 1512–0095 are in §§ 17.121, 17.126, 17.127, 17.132, and 17.136. This information is required by ATF to describe the formulas for nonbeverage and intermediate products. The information is used to ensure that drawback products meet the statutory requirements for approval as being medicines, medicinal preparations, food products, flavors, or flavoring extracts that are unfit for beverage use.

The collections of information under control number 1512–0141 are in §§ 17.92, 17.93, 17.142, 17.145, and 17.146. The information on this claim form must be submitted to ATF by manufacturers claiming nonbeverage drawback or refund of special (occupational) tax. The information is used to determine whether the claim is valid.

The collection of information under control number 1512–0188 is in § 17.6. The information on this form provides ATF with notification of corporate officials authorized to sign documents on behalf of the corporation.

The collections of information under control number 1512–0378 are in §§ 17.3, 17.54, 17.111, 17.112, 17.122–17.125, 17.143, 17.168(a), 17.183, and 17.187. This control number covers miscellaneous information required by ATF on an irregular basis to ensure compliance with law and regulations or to grant permission for the use of optional procedures.

The collections of information under control number 1512–0379 are in §§ 17.147, 17.161–17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186. This information is required to support claims for drawback. The supporting data submitted to ATF is used to make a preliminary verification of claims before they are paid. The records kept by manufacturers at their plants are used by ATF inspectors conducting on-site inspections.

The collections of information under control number 1512–0472 are in §§ 17.31–17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74. The information on this special tax return is required when paying special (occupational) tax. The collections of information under control number 1512–0492 are in §§ 17.42–43, 17.52, and 17.55. This control number pertains to records associated with the preparation and filing of the special tax return. The collections of information under control number 1512–0500 are in §§ 17.31–34, 17.41, and 17.53. This requirement is the same special tax return covered by control number 1512–0472, except that the form is modified (simplified) for use by renewal taxpayers.

The estimated total number of respondents and recordkeepers affected by these collections of information is 611. The estimated average annual burden is approximately 36 hours per respondent or recordkeeper. (This figure represents the additional time that would be required, beyond what a manufacturer would customarily spend on recordkeeping in the ordinary course of his business.) Comments on these collections of information, including comments relating to the accuracy of the burden estimate and suggestions for reducing this burden, should be submitted to the Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this notice of proposed rulemaking. An initial regulatory flexibility analysis has been prepared and reads as follows.

I. Rationale for Agency Action

The law (26 U.S.C. 5131–5134) authorizes a drawback of internal revenue tax on alcohol used in the manufacture of certain nonbeverage products. This drawback shall be granted by the Department of the Treasury on receipt of a proper claim. To determine whether a claim is proper, regulations may require certain records to be kept and reports to be submitted by those claiming drawback, in order to establish their eligibility. That is, it must be shown that the alcohol on which drawback is claimed: (A) Was actually used, (B) was used in the manufacture of the particular products for which drawback is authorized, and (C) was originally taxpaid.

The regulations dealing with nonbeverage drawback are therefore issued under this primary rationale: to protect the revenue. However, this rationale is modified by a secondary rationale, which is: To require only those items of information to be submitted or to be recorded which are actually necessary to establish eligibility for drawback. With respect to those items required to be submitted to the Bureau of Alcohol, Tobacco and Firearms (ATF), only those should be submitted which are actually used to maintain control over the approval of claims. With respect to those records required to be maintained at the claimant's premises, the claimant's own record system should be utilized at all possible times to avoid duplication.

II. Objective and Legal Basis for the Proposed Rule

A. Objective Basis

The objective basis of these regulations is that a dual control system is used to verify the propriety of claims: Initially, a sampling procedure in the regional office is used to screen the claims before they are paid; subsequently, periodic field inspections at the manufacturing premises provide the opportunity to audit more detailed records.

At the regional offices, not every item on every report is checked every time; however, a sufficient number are checked in order to insure that there is no likelihood of fraud. Those reports which are checked must contain sufficient information to reveal undisguised fraud and/or honest mistakes. The information submitted should also permit detection of any problems which would result in scheduling an on-site inspection sooner than would otherwise be planned.

During on-site inspections, ATF officers examine original batch records to verify compliance with approved formulas. A physical inventory is taken and records are examined to see whether they agree with the inventory. If necessary, a claim adjustment may be required.

B. Legal Basis

The legal basis of these regulations is found in 26 U.S.C. 5131–5134 and 7805. These laws give the Secretary of the Treasury broad discretion to promulgate regulations, but the regulations must be limited to the function of revenue protection. Treasury Department Order No. 120–01 (dated June 6, 1972, effective July 1, 1972) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of prescribing and administering such regulations.

C. Estimate of Number of Small Entities Affected and Types

It is estimated that this document will affect about 600 small entities which use taxpaid alcohol to manufacture nonbeverage products.

III. Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements

A. Reporting Requirements

The most significant reporting requirements of this document pertain to the supporting data that is required to accompany each claim. The supporting data must include information regarding: The amount of taxpaid alcohol received, the amount of each product produced, the amount of taxpaid alcohol used and the product in which used, the amount of alcohol recovered (if any), the amount of tax claimed as drawback, the amount of alcohol on hand at the beginning and end of each claim period, and an explanation of any discrepancies

disclosed by physical inventory. Other reports which are required less frequently include: Statements of formula and process (which are necessary to establish that the products being manufactured are of the types for which drawback is authorized under law), bonds and consents of surety in the case of claimants filing monthly claims, samples of the product if needed to determine its nonbeverage character, a special tax return and registration (as required by law in 26 U.S.C. 5131–5132), an application for an employer identification number in order to identify the special taxpayer, and information relating to any changes in the location or control of the business. If no drawback is claimed, then none of the requirements need be complied with. The reporting requirements affect all classes of nonbeverage drawback manufacturers. Some knowledge of chemistry is helpful in preparing the required formulas for submission, and an elementary knowledge of bookkeeping is needed to maintain the required accounts for submission.

B. Recordkeeping Requirements

The recordkeeping requirements of this regulation are designed to be supplementary to the reporting requirements. The records support and amplify the statements given in the required reports. Ultimately, the purpose is to facilitate verification of the amount of drawback claimed. No particular form of record is required; rather, the records may be kept in any format, so long as the information is clearly expressed. For the most part, these required records are merely ordinary business records which the manufacturer would normally maintain in the course of his business. However, it is still necessary for regulations to specify that these records must be kept; otherwise, a claimant under investigation might falsely deny keeping the records, and if there were no requirement that the records be kept, then it would be difficult to prove any violation against such a person. The records which this regulation requires claimants to keep are: Copies of the reports submitted, records of disposition of nonbeverage products, records of raw materials received, accounting for recovered alcohol, invoices of purchases, evidence of taxpayment, and batch records of ingredients used in each production batch. The regional director (compliance) may also require a manufacturer to keep inventory records of raw materials and nonbeverage products. All classes of nonbeverage drawback manufacturers are affected by these recordkeeping requirements. An elementary knowledge of bookkeeping is needed to prepare and record the prescribed accounts.

C. Compliance Requirements

The compliance requirements of this regulation are: To retain the special tax stamp at the place of business as evidence of payment of special tax; to observe the statutory time restrictions for filing of claims (six months following the close of the quarter within which the alcohol was used); to retain the required records for a period of at least 3 years; to obliterate taxpayment marks on emptied containers of distilled spirits (as required by 26 U.S.C. 5206); to use intermediate products, and alcohol recovered from nonbeverage products, for no purpose other than to manufacture nonbeverage products; to transfer intermediate products to no one except another branch or plant of the same manufacturer; to refrain from transferring unfinished nonbeverage products to any other premises; and to refrain from selling or transferring any recovered alcohol or material from which alcohol can be recovered, except as provided by regulation. All classes of nonbeverage drawback manufacturers are affected by these requirements. No special skills are needed for compliance.

IV. Conflicting, Duplicative or Overlapping Federal Rules

Some of the requirements of these regulations may overlap requirements of the Internal Revenue Service (IRS). The reason for this is that the IRS requires certain financial and cost accounting records in order to establish income tax liability, and in some cases the same information may be required by this part in order to establish eligibility for drawback of excise tax. In case of such overlap, the proprietor would not be required to keep two separate sets of records; the same set of records could suffice to meet the requirements of both ATF and IRS regulations. There would be no additional burden, because these records are merely those which anyone would keep in the ordinary course of business. The Food and Drug Administration (FDA) may also require certain records which duplicate or overlap the records required by these regulations. Such FDA records would also satisfy the ATF requirement, due to the fact that these regulations do not specify any particular format for the records, so long as the information is clearly presented and available to ATF inspectors.

V. Alternatives

A. Multitiering

This concept is not used, because the large majority of manufacturers of nonbeverage products are small entities. Consequently, the regulatory requirements have been specifically designed in consideration of the needs of small establishments. Larger establishments should also be able to comply with these requirements without particular difficulties.

B. Simplification of Requirements

The requirements as they are established are felt to be at the minimum. These requirements are necessary in order to protect the revenue and detect fraud against the Treasury. In most cases, of course, no fraud exists. But the requirements must be imposed equally on all claimants, so that if and when fraud exists, it will be detected. This is the statutory mandate of 26 U.S.C. 5132.

C. Performance Standards

This concept was utilized as much as possible. For example, an ATF form for "supporting data" reports will be provided—but the format presented on that form will not be required. (Any desired format may be used if it provides the necessary information.) Similarly, the required records also may be kept in any convenient format. However, the needs of the Government, with respect to expeditious processing of claims and tax payments, mandate prescription of specific forms for submission of drawback claims and payment of special tax. A specific form is also prescribed for formula submission, in order to facilitate communication concerning the formula among the applicable ATF offices as well as between ATF and the claimant. A special regulations section authorizes variation from most requirements if good cause can be shown for a variation.

D. Exemption of Small Entities

The law does not authorize exemption of any entity from the requirements.

Drafting Information

The principal drafters of this document are Steven C. Simon and C. A. Mullen of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Parts 17 and 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs,

Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and Containers, Reporting and recordkeeping requirements, Research, Spices and flavorings, Surety bonds, Security measures, Stills, Transportation, U.S. possessions, Vinegar, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Liquors, Penalties, Perfume, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine

Issuance

Accordingly, it is proposed that title 27 of the Code of Federal Regulations be amended as follows:

Paragraph A. Title 27 CFR part 17 is added to read as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Subpart A—General Provisions

Sec.

17.1 Scope of regulations.
17.2 Forms prescribed.
17.3 Alternate methods or procedures.
17.4 OMB control numbers assigned under the Paperwork Reduction Act.
17.5 Products manufactured in Puerto Rico or the Virgin Islands.
17.6 Signature authority.

Subpart B—Definitions

17.11 Meaning of terms.

Subpart C—Special Tax

17.21 Payment of special tax.
17.22 Rates of special tax.
17.23 Special tax for each place of business.
17.24 Time for payment of special tax.

Special Tax Returns

17.31 Filing of return and payment of special tax.
17.32 Completion of ATF Form 5630.5.
17.33 Signature on returns, ATF Form 5630.5.
17.34 Verification of returns.

Employer Identification Number

17.41 Requirement for employer identification number.
17.42 Application for employer identification number.
17.43 Preparation and filing of Form SS–4.

Subpart D—Special Tax Stamps

17.51 Issuance of stamps.
17.52 Distribution of stamps for multiple locations.
17.53 Correction of errors on stamps.
17.54 Lost or destroyed stamps.
17.55 Retention of special tax stamps.

Change in Location

17.61 General.
17.62 Failure to register.
17.63 Certificates in lieu of lost stamps.

Change in Control

17.71 General.
17.72 Right of succession.
17.73 Failure to register.
17.74 Certificates in lieu of lost stamps.
17.75 Formation of partnership or corporation.
17.76 Addition or withdrawal of partners.
17.77 Reincorporation.

Change in Name or Style

17.81 General.
17.82 Change in capital stock.
17.83 Sale of stock.

Refund of Special Tax

17.91 Absence of liability, refund of special tax.
17.92 Filing of refund claim.
17.93 Time limit for filing refund claim.

Subpart E—Bonds and Consents of Sureties

17.101 General.
17.102 Amount of bond.
17.103 Bonds obtained from surety companies.
17.104 Deposit of collateral.
17.105 Filing of powers of attorney.
17.106 Consents of surety.
17.107 Strengthening bonds.
17.108 Superseding bonds.

Termination of Bonds

17.111 General.
17.112 Notice by surety of termination of bond.
17.113 Extent of release of surety from liability under bond.
17.114 Release of collateral.

Subpart F—Formulas and Samples

17.121 Product formulas.
17.122 Amended or revised formulas.
17.123 Statement of process.
17.124 Samples.
17.125 Adoption of formulas and processes.
17.126 Formulas for intermediate products.
17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

Approval of Formulas

17.131 Formulas on ATF Form 5530.5.
17.132 U.S.P., N.F., and H.P.U.S. preparations.
17.133 Food product formulas.
17.134 Determination of unfitness for beverage purposes.
17.135 Use of specially denatured alcohol (S.D.A.).
17.136 Compliance with Food and Drug Administration requirements.
17.137 Formulas disapproved for drawback.

Subpart G—Claims for Drawback

17.141 Drawback.
17.142 Claims.
17.143 Notice for monthly claims.
17.144 Bond for monthly claims.
17.145 Date of filing claim.
17.146 Information to be shown by the claim.
17.147 Supporting data.
17.148 Allowance of claims.

Spirits Subject to Drawback

17.151 Use of distilled spirits.
17.152 Time of use of spirits.
17.153 Recovered spirits.
17.154 Spirits contained in intermediate products.
17.155 Spirits consumed in manufacturing intermediate products.

Subpart H—Records

17.161 General.
17.162 Receipt of distilled spirits.
17.163 Evidence of taxpayment of distilled spirits.
17.164 Production record.
17.165 Receipt of raw ingredients.
17.166 Disposition of nonbeverage products.
17.167 Inventories.
17.168 Recovered spirits.
17.169 Transfer of intermediate products.
17.170 Retention of records.

17.171 Inspection of records.

Subpart I—Miscellaneous Provisions

17.181 Exportation of medicinal preparations and flavoring extracts.
17.182 Drawback claims by druggists.
17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.
17.184 Distilled spirits container marks.
17.185 Requirements for intermediate products and unfinished nonbeverage products.
17.186 Transfer of distilled spirits to other containers.
17.187 Discontinuance of business.

Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 6676, 7011, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, and flavoring extracts that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: Obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including bonds and records, required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 17.3 Alternate methods or procedures.

(a) *General.* The Director may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she finds that—

(1) Good cause has been shown for the use of the alternate method or procedure:

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the method or procedure prescribed by this part, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in any increase in cost to the Government or hinder the effective administration of this part.

(b) *Application.* A letter of application to employ an alternate method or procedure shall be submitted to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the Director. The Director shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the Director in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his or her judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization given by the Director under this section.

§ 17.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96–511.

(b) *OMB control number 1512–0078.* OMB control number is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1512–0079.* OMB control number 1512–0079 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1512–0095.* OMB control number 1512–0095 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512–0141.* OMB control number 1512–0141 is assigned to the following sections in this part: §§ 17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512–0188.* OMB control number 1512–0188 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1512–0378.* OMB control number 1512–0378 is assigned to the following sections in this part: §§ 17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.——

(h) *OMB control number 1512–0379.* OMB control number 1512–0379 is assigned to the following sections in this part: §§ 17.147, 17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512–0472.* OMB control number 1512–0472 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512–0492.* OMB control number 1512–0492 is assigned to the following sections in this part: §§ 17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512–0500.* OMB control number 1512–0500 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

§ 17.5 Products manufactured in Puerto Rico or the Virgin Islands.

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see Part 250 of this chapter.

§ 17.6 Signature authority.

No claim, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office with which the required document must be filed. Except as otherwise provided by this part, powers of attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. If other than a manually signed original is submitted, it shall be accompanied by certification of its validity. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, AFT Form 5100.1, Signing Authority for Corporate Officials, may

be used. For additional provisions regarding powers of attorney, see § 17.105 and 26 CFR part 601, subpart E.

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Alcohol and Tobacco Laboratory. The Alcohol and Tobacco Laboratory, Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland 20850.

Approved, or *approved for drawback.* When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226; or his or her delegate.

Distilled spirits, or *spirits.* That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Effective tax rate. The next tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

Eligible, or *eligible for drawback.* When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of §§ 70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been "filed" when it is received by the office of the proper Government official; but if an item is mailed timely, then the United States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products which (1) are made with taxpaid distilled spirits, (2) have been disapproved for drawback, and (3) are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. Ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory stains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit, which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit (referred to water at 60 degrees Fahrenheit as unity), or the alcoholic equivalent thereof.

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Subject to drawback. This term is used with reference to spirits. Eligible spirits become "subject to drawback" when they are used in the manufacture of a nonbeverage product. When spirits have become "subject to drawback," they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

This chapter. Chapter I of title 27 of the Code of Federal Regulations.

U.S.C. The United States Code.

Subpart C—Special Tax

§ 17.21 Payment of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in § 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

§ 17.22 Rates of special tax.

(a) *Previous rates.* Prior to January 1, 1988, the rates of special tax were based on usage of distilled spirits during the tax year, as follows: $25 per tax year for total annual use not exceeding 25 proof gallons, $50 per tax year for total annual use not exceeding 50 proof gallons, and $100 per tax year for total annual use exceeding 50 proof gallons.

(b) *Current rate.* Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

(c) *Transition rule.* Manufacturers engaged in drawback operations on January 1, 1988, who paid special tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax, which shall not exceed one-half the excess (if any) of the rate of special tax in effect January 1, 1988, over the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

§ 17.23 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

§ 17.24 Time for payment of special tax.

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty at any time prior to completion of final action on the claim.

Special Tax Returns

§ 17.31 Filing of return and payment of special tax.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 6091, 6151)

§ 17.32 Completion of ATF Form 5630.5.

(a) *General.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §§ 17.41–43).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class of special tax to which the taxpayer is subject.

(6) Ownership and control information: The name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner if the taxpayer is a partnership, and every person owning 10% or more of its stock if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 17.170.

(26 U.S.C. 6011, 7011)

§ 17.33 Signature on returns, ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as "individual owner," "member of partnership," or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

§ 17.34 Verification of returns.

ATF Form 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 U.S.C. 6065))

Employer Identification Number

§ 17.41 Requirement for employer identification number.

The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS–4, Application for Employer Identification Number, filed by the taxpayer. Form SS–4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS–4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS–4 shall be filed on or before the seventh day after the date on which the first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Preparation and filing of Form SS–4.

The taxpayer shall prepare and file the application on IRS Form SS–4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps

§ 17.51 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§ 17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by § 17.32(b)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by § 17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the

business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location.* On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) *Multiple locations.* If an error is discovered on a special tax stamp obtained under the provisions of § 17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the regional director (compliance). On receipt of this notification, the regional director (compliance) shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in § 17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available for inspection by any ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))

Change in Location

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as "Amended Return." This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A manufacturer who fails to register a change of location with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Change in Control

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register the succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71–73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

Change in Name or Style

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock.

A new special tax is not required by reason of a change of name or increase

in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

Refund of Special Tax

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim shall be filed with the regional director (compliance) for the region in which the place of manufacture is located. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5530.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed $200,000 nor be less than $1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the Federal Register annually on the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1. Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained form surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR Part 225.

(Sec. 1. Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney in accordance with § 17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. The regional director (compliance) who is authorized to approve the bond may, when he or she considers it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent.

(b) *Principal.* The principal shall execute and file with the regional director (compliance) a power of attorney, in accordance with § 17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1. Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, and consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the regional director (compliance) shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the security of the

bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, "Superseding Bond." When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

Termination of Bonds

§ 17.111 General.

Bonds on ATF Form 5530.3 shall be terminated by the regional director (compliance), as to liability on drawback allowed after a specified future date, in the following circumstances:

(a) Pursuant to a notice by the surety as provided in § 17.112.

(b) Following approval of a superseding bond, as provided in § 17.108.

(c) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis. However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the regional director (compliance) shall mark the bond "canceled," followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date name in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the regional director (compliance). The surety shall deliver one copy of the notice to the principal and the original to the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgement or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the regional director (compliance) according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the regional director (compliance) determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

(a) *General.* Except as provided in § § 17.132 and 17.182, manufacturers shall file quantitiative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) *Filing.* Formulas shall be filed with the Alcohol and Tobacco Laboratory on ATF Form 5530.5, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in § 17.137.

(c) *Numbering.* The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

(d) *Distribution and retention of approved formulas.* One copy of each approved Form 5530.5 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in § 17.170, and shall be made available to ATF officers for examination in the investigation of drawback claims.

§ 17.122 Amended or revised formulas.

Amended or revised formulas are generally considered to be new formulas and shall be numbered accordingly. However, minor changes may be made to a current formula on ATF Form 5530.5 with retention of the original formula number, if approval is obtained from the Director. In order to obtain approval to make a minor formula change, the person holding the Form 5530.5 shall submit a letter of application to the Alcohol and Tobacco Laboratory, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

§ 17.123 Statement of process.

The Director, or the regional director (compliance), may at any time require any person claiming drawback under the regulations in this part to file a statement of process, in addition to that required by ATF Form 5530.5, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

§ 17.124 Samples.

The Director, or the regional director (compliance), may at any time require any person claiming drawback or submitting a formula for approval under the regulations in this part to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the

mixture shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas.* If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of adoption with the regional director (compliance). The notice shall be filed with the first claim relating to any of the adopted formulas. The notice shall list, by name and serial number, all formulas to be adopted, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas from a different location.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a letterhead notice, accompanied by two photocopies of each formula to be adopted, with the Alcohol and Tobacco Laboratory for transmittal to the regional director (compliance). The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5530.8) filed with the first claim relating to the adopted formula(s).

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5530.5 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see § 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in § 17.122.

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from "intermediate product" to "unfinished nonbeverage product" (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5530.5. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

Approval of Formulas

§ 17.131 Formulas on ATF Form 5530.5.

Upon receipt by the Alcohol and Tobacco Laboratory, formulas on ATF Form 5530.5 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by regulation or ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5530.5.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4X") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5530.5 in accordance with this subpart. The formula shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5530.5 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Candies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives,

emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The Director has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5530.5, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5530.5 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479–A or Form 5150.19, Formula for Article Made with Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, so long as—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; spirits recovered under this paragraph shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

ATF will not consider a product to be a medicine, medicinal preparation, food product, flavor, or flavoring extract if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of the product in accordance with that formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of Parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is $1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer shall file claim for drawback with the regional director (compliance) for the region in which the place of manufacture is located. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place of business. The regional director (compliance) has the authority to approve or disapprove claims. Claims shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the regional director (compliance), in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the regional director (compliance).

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall

file with the regional director (compliance) an executed bond on ATF Form 5530.3, conforming to the provisions of Subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be delayed until a strengthening or superseding bond in a sufficient amount is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed with the regional director (compliance) within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits coverd by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

The claim shall set forth the following:

(a) Whether the special tax has been paid.

(b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.

(c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.

(d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under Subpart F of this part. (If not, attach explanation.)

(e) That the data submitted in support of the claim are correct.

§ 17.147 Supporting data.

(a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5530.8, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5530.8 may be used without prior authorization, if the modified format shows all of the required information that is pertinent to the manufacturing operation. Under § 17.123, the regional director (compliance) may require additional supporting data when needed to determine the correctness of drawback claims.

(b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.

(c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.

(d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains in any category of spirits shall not be offset by losses in other categories.

§ 17.148 Allowance of claims.

(a) *General.* Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131–5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for beverage purposes.

(b) *Penalty.* Noncompliance with the requirements of 26 U.S.C. 5131–5134 or of this part subjects the claimant to a civil penalty of $1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of $1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause.* Reasonable cause will be accepted as a defense to a civil penalty where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case must be individually evaluated.

(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))

Spirits Subject to Drawback

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General.* Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(B) *Spirits used in an ion exchange column.* Distilled spirits used in recharging an ion exchange column, the operation of which is essential to production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.* Further manipulation of a product, such as aging of filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under the principle in paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Supbart H—Records

§ 17.161 General.

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these records, but the data required to be shown shall be clearly recorded and organized to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required infomation or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacture at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received—

(1) The date of receipt;

(2) The name and address of the person from whom received;

(3) The serial number or other identification mark (if any) of the tank car, tank truck, barrel, or drum;

(4) The name of the producer or warehouseman who paid or determined the tax;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(b) Distilled spirits received in bottles. For distilled spirits received in bottles, the manufacture shall record—

(1) The date of receipt;

(2) The name and address of the seller;

(3) The serial number of each case, if the bottles are received in cases;

(4) The name of the bottler;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

(1) The date of receipt;

(2) The name of the producer or warehouseman who paid or determined the tax;

(3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by § 19.780 of this chapter to accompany spirits received from a distilled spirits plant. If spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by § 19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by § 19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.* If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.* If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by § 19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* For each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under § 19.780 of this chapter. This record shall be retained as evidence of taxpayment of the spirits. Each such record shall show the effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whiskey (as defined in the standards or identity prescribed by § 5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.* If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.* The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume of all spirits), the date when eligible spirits were considered used (see § 17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by § 17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.* If the product was manufactured in compliance with a formula submitted to ATF or exempt from such submission under § 17.132, the production record shall refer to ingredients by the same names as are used for them in the product's formula. (Other names may be added in the production record, if necessary for the manufacturer's operations.) Usage of spirits may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the "Gauging Manual," is available. See subpart E of part 30 of this chapter and § 30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received—

(a) The date of receipt;

(b) The quantity received; and

(c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record—

(1) The formula number of the product;

(2) The date of shipment;

(3) The quantity shipped; and

(4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record—

(1) The type of disposition (if used in another product, its formula number shall be shown);

(2) The date of disposition; and

(3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either (1) contains less than 3 percent of distilled spirits by volume, or (2) is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the regional director (compliance) may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The "on hand" figures reported in Part II of ATF Form 5530.8 shall be verified by physical inventories taken as of the end of each claim period for which a claim is filed. Spirits taxpaid at different effective tax rates shall be inventoried separately. Details of the inventories (when taken, by whom taken, subtotals for each product inventoried) shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5530.8) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by losses in other categories. If no claim is filed, then no physical inventory is required for that claim period.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the regional director (compliance) may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the regional director (compliance). Recovery operations shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

(1) The date of recovery;

(2) The commodity or process from which the spirits were recovered;

(3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;

(4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;

(5) The commodity in which the recovered distilled spirits were reused; and

(6) The date of reuse.

§ 17.169 Transfer of intermediate products.

When intermediate products are transferred as permitted by § 17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

§ 17.170 Retention of records.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5530.5 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the regional director (compliance) may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146)).

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by ATF officers. If refills have been made of prescriptions received in a previous quarter, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *General.* Manufacturers of nonbeverage products shall not sell or transfer recovered alcohol to any other premises. If recovered alcohol is stored pending reuse, storage facilities shall be adequate to protect the revenue. By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (b) of this section, prior written approval shall be obtained from the regional director (compliance) as to the adequacy, under this section, of any substance proposed to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(b) *Spent vanilla beans.* Specific approval from the regional director (compliance) is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

§ 17.184 Distilled spirits container marks.

All marks required by part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98–369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits

may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. (See § 17.169 for recordkeeping requirement.) For the purposes of this section, the phrase "separate and distinct entities" includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5530.5. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as "in process" in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as part of the production records for the applicable nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.

PART 19—[AMENDED]

Par. B. The regulations in 27 CFR part 19 are amended as follows:

1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5553, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Part 19, subpart D, is amended to add §§ 19.57–19.58 grouped under an undesignated center heading, to read as follows:

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Sec.

Activities Not Subject To This Part

19.57 Recovery and reuse of denatured spirits in manufacturing processes.

19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

* * * * *

Activities Not Subject to This Part

§ 19.57 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufactures who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, and flavoring extracts, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Products classed as liquors.* Products specified under Part 17 of this chapter as being fit for beverage use are held to be liquors. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also classed as liquors. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit

to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required.* If the regional director (compliance) finds at any time that any product manufactured under this section as an unfit product is being used for beverage purposes, or for mixing with beverage liquors other than by a processor, he or she shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. However, the provisions of this paragraph shall not prohibit the use of unfit products in small quantities for flavoring drinks at the time of serving for immediate consumption. Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsusceptible of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96-39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

§ 19.69 [Removed]

3. Section 19.69 is removed.

4. Section 19.780(c)(4) is revised to read as follows:

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

* * * * *

(c) * * *

(4) Kind, proof, and quantity of each container of distilled spirits.

* * * * *

PART 70—[AMENDED]

Par. C. The regulations in 27 CFR part 70 are amended as follows:

1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656-6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

2. The concluding text of § 70.321(a) is revised to read as follows:

§ 70.321 Registration of persons paying a special tax.

(a) *Persons required to register.* * * *

* * * * *

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 (Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

* * * * *

§ 70.411 [Amended]

3. Section 70.411(c)(2) is amended by removing paragraphs (c)(2)(v) and (c)(2)(vii), by renumbering existing paragraph (c)(2)(vi) as paragraph (c)(2)(v), and by adding a new paragraph (c)(2)(vi) to read as follows:

(c) * * *

(2) * * *

(vi) Floor stocks tax on alcoholic beverages and imported perfumes held for sale on January 1, 1991.

* * * * *

4. Section 70.411(c)(17) is amended by replacing the words "part 197" with the words "part 17".

§ 70.414 [Amended]

5. Section 70.414(j) is amended by replacing the words "part 197" with the words "part 17".

PART 170—[AMENDED]

Par. D. The regulations in 27 CFR part 170 are amended as follows:

1. The authority citation for part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5101, 5102, 5179, 5291, 5301, 5362, 5601, 5615, 5687, 7805; 31 U.S.C. 9304, 9306.

Subpart U—[Removed and Reserved]

2. Subpart U is removed and reserved.

PART 194—[AMENDED]

Par. E. The regulations in 27 CFR part 194 are amended as follows:

1. The authority citation for part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111-5117, 5121-5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 6676, 7011, 7805.

2. Section 194.33(b) is revised to read as follows:

§ 194.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

* * * * *

(b) *Products unfit for beverage use.* Products meeting the requirements for exemption from qualification under the provisions of § 19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

§ 194.191 [Amended]

3. Section 194.191(a) is amended by replacing the words "part 170" with the words "§ 19.58".

PART 197—[REMOVED]

Par. F. Title 27 CFR part 197 is removed.

PART 250—[AMENDED]

Par. G. The regulations in 27 CFR part 250 are amended as follows:

1. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131-5134, 5141, 5205, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.51 [Amended]

2. Paragraph (c) of § 250.51 is amended by removing the word "(1678)".

§ 250.171 [Amended]

3. The second sentence of § 250.171 is amended by replacing the words "part 197" with the words "part 17".

4. Section 250.172 is revised to read as follows:

§ 250.172 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5530.3. When the limit of liability under a bond given in less than the maximum amount has been reached, no further drawback on monthly claims will be allowed until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part.

(b) *Approval required.* No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until bond on Form 5530.3 has been approved by the regional director (compliance) for the region in which is located the person's business premises from which entry of eligible articles is caused or effected.

5. In § 250.173, the first sentence of paragraph (a), the introductory text of paragraph (c), and the first sentence of

paragraph (d) are revised to read as follows:

§ 250.173 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations.* * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5530.7, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States.* * *

§ 250.307 [Amended]

6. The second sentence of § 250.307 is amended by replacing the words "part 197" wherever they occur with the words "part 17".

7. Section 250.308 is revised to read as follows:

§ 250.308 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5530.3. When the limit of liability under a bond given in less than the maximum amount has been reached, no further drawback on monthly claims will be allowed until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part.

(b) *Approval required.* No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until bond on Form 5530.3 has been approved by the regional director (compliance) for the region in which is located the person's business premises from which entry of eligible articles is caused or effected.

8. In § 250.309, the first sentence of paragraph (a), the introductory text of paragraph (c), paragraph (c)(1) in its entirety, and the first sentence of paragraph (d) are revised to read as follows:

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations.* * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5530.7, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued:

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States.* * *

Signed: June 5, 1992.

Stephen E. Higgins,

Director.

Approved: August 22, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-20622 Filed 8-28-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 24, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: AFT F 5530.8.
Type of Review: New collection.
Title: Supporting Data for Nonbeverage Drawback Claims.
Description: Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability; allows office (initial) verification of claims.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 611.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Monthly, Quarterly.
Estimated Total Reporting Burden: 3,666 hours.
OMB Number: 1512–0095.
Form Number: ATF F 5530.5.
Type of Review: Revision.
Title: Formula and Process for Nonbeverage Products.
Description: Businesses which use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance), if they can substantiate by using ATF Form 5530.5 that the spirits were used in the manufacture of products unfit for beverage purposes. This determination is based on the formula for the product.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 625.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,500 hours.
OMB Number: 1512–0378.
Form Number: AFT REC 5530/1.
Type of Review: Revision.
Title: Application and Notices—Manufacturers of Nonbeverage Products.
Description: Reports (letterhead applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 640.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 640 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

BILLING CODE 4810–31–M

Form Approved: OMB No. 1512-0095 ( )

Department of the Treasury -- Bureau of Alcohol, Tobacco and Firearms
FORMULA AND PROCESS FOR NONBEVERAGE PRODUCT
(See instructions on back -- prepare in triplicate, except as indicated.)

1. Formula No.

2. Kind (e.g. Alcohol, Rum) & Proof of Spirits on Which Drawback Will Be Claimed.

3. Name of Product.

4. Check if Sample Will Be Submitted. ☐

5. No. of Days to Complete Process.

6. Check Kind of Product:
__ Medicine/Medicinal Prep.
__ Food Product
__ Flavor/Flavoring Extract

7. Formulas Superseded.

8. Name of Manufacturer & Principal Address Where Product Will Be Produced (Space for More Addresses on Reverse).

9. Ratio of Eligible Spirits Used (in proof gals.) to Product Made (wine gals.).

10. Alcohol Content by Volume of Finished Product. %

11. If Finished Product Is to Be Used in Alcoholic Beverages:
A. Does Product Contain Natural Flavoring? (Yes or No) _____
B. Does Product Contain Greater Than 0.1% Artificial Flavoring (Excluding Vanillin, Ethyl Vanillin, Maltol, and Ethyl Maltol)? (Yes or No) _____
C. State Parts Per Million in Product of: Synthetic Vanillin _____ Ethyl Vanillin _____ Synthetic Maltol _____ Ethyl Maltol _____
D. Does Product Contain Any Color Additive? _____ If Yes, Which? _____
E. Are All Ingredients Approved by FDA for Use Without Limitation or Restriction? _____

12. If Made With Recovered Spirits: Ratio of Eligible Plus Recovered Spirits Used (in proof gals.) to Product Made (wine gals.).

13. Formula and Process (Use Additional Space on Reverse if Necessary).

DRAFT

14. Person to Contact Regarding Submission (Include Area Code & Phone No.)

15. Signature & Title of Applicant or Authorized Agent.

16. Date.

APPLICANT: PLEASE MAKE NO ENTRY BELOW THIS LINE.

17. Laboratory Sample Number.

18. Action.

19. Alcohol by Volume. %

20. Analyst.

21. Date.

ATF FORM 5530.5 ( )

INSTRUCTIONS

A. Before filling out this form, read carefully Subpart F of Part 17, title 27, Code of Federal Regulations. Submit a separate formula for each nonbeverage product made with taxpaid distilled spirits on which drawback is claimed (except current U.S.P., N.F., and H.P.U.S. preparations for which quantitative formulas are not required).

B. This form must be filed within 6 months after the end of the quarter in which distilled spirits were used in the manufacture of nonbeverage products. Submit to: Alcohol & Tobacco Laboratory (Attn: Drawback), 1401 Research Blvd., Rockville, MD 20850. Submit in triplicate; however, if the product will be manufactured at more than one location, submit two additional copies for each additional location.

C. Item 1. Formula numbers begin with number "1" for the first submission and progress sequentially with future submissions. For numbering when formulas will be used at more than one plant, see 27 CFR 17.121(c).

D. Item 3. The name must reflect the type of product. For example, a "natural peach flavor" should contain all natural ingredients as well as real peach. If it does not contain peach, it could be called "natural peach type flavor."

E. Item 4. Submission of samples is voluntary, unless specifically required under 27 CFR 17.124. If it is known that a sample will be submitted, either with the formula or under separate cover, please check the box.

F. Item 5. State the number of days it takes to manufacture the product. If it takes only a few hours to mix it, but takes an additional day to filter it, that should be noted.

G. Item 6. Indicate the type of product. Cough syrups and cold relief products are considered medicines/medicinal preparations. Cakes and similar products are considered to be food products, while products such as lemon extracts are considered flavors. Submit commercial labels or facsimiles and any available supporting data for bitters (flavoring or medicinal) and for any other product that cannot be readily classified in the product types listed.

H. Item 7. State the number(s) of any formulas to be replaced by the current submission. If formula(s) being superseded have been approved for use at plant(s) other than the one given in item 8, specify such other plant(s).

I. Item 9. Divide the number of proof gallons of eligible alcohol used in manufacturing and standardizing the product by the yield of finished product (in wine gallons). Enter as a decimal. For example, if 32 proof gallons are used to make 100 gallons of product, "0.32 p.g./w.g." would be the ratio. Eligible alcohol includes alcohol contained in intermediate products (as defined in 27 CFR 17.11) but not alcohol contained in nonbeverage products, being used as ingredients, on which drawback may be claimed separately. If a range is stated, include the reason(s) for variation (item 22 may be used for this purpose).

J. Item 10. State the actual percentage of absolute alcohol by volume in the finished product. Include all alcohol, both eligible and ineligible. This is the percentage of alcohol that would be found by analysis. If the product is not a liquid, state the proof gals. of alcohol remaining in a given quantity (by weight) of finished product.

K. Item 11. Answer only if product is for use in alcoholic beverages. Definitions of "natural" and "artificial" are found in FDA regulations, 21 CFR 101.22. "Color additive" is defined in FDA regulations, 21 CFR 70.3. If the answer to question E is "No," limited or restricted ingredients must be noted as such in item 13, including quantity used.

L. Item 12. Answer only if recovered alcohol will be used. Enter as a decimal. Include eligible spirits and all recovered alcohol (both eligible and ineligible). A range may be stated.

M. Item 13. List the name, quantity, and alcohol content, if any (by volume), of each ingredient used. Either metric or English measure may be used. Usage of ingredients containing alcohol and the yield of liquid products must be expressed in wine gals. Include proof gallons of eligible spirits and recovered spirits used. Give the product name and ATF formula no. (from ATF Form 5530.5 or 1678) of alcoholic ingredients if self-manufactured. If purchased, give the manufacturer's name, the name of the product, and the ATF formula number, if known. Example:

Natural and Artificial Vanilla Flavor:

Vanilla Extract 10 Fold (35% alcohol, purchased from X Company, Formula No. 102) .	473 ml (.125 wine gal.)
Vanilla Flavor 2 Fold (30% alcohol, our drawback Formula No. 422)	1892 ml (.5 wine gal.)
Vanillin	30 g.
Alcohol - 190 proof . . . . (Eligible for drawback)	946 ml (.25 wine gal.) (.475 proof gal.)
Water Q.S. to	3785 ml (1 wine gal.)

If additional spirits may need to be added for standardization after all the ingredients called for by the formula have been mixed together, please so state. Identify any colors by their official FDA designations (e.g. caramel, FD&C Yellow No. 5). Describe the manufacturing process (i.e. simple mixture, maceration, percolation, etc.). Show the approximate loss of spirits, if any, during processing (i.e. filtration, evaporation, etc.), and indicate what quantity of alcohol, if any, is recovered. If the manufacturing process involves separate stages, fully describe them and indicate the alcohol content (as a percent by volume) at the end of each stage. For food products, such as preserved fruits, cakes, soups, etc., the formula need only show the number of proof gallons of distilled spirits used to make a given quantity of finished product. A sample will be required for such products.

N. Item 15. The applicant or his authorized agent must sign in the space provided and indicate the capacity in which he is signing (e.g. sole proprietor, attorney-in-fact, etc.).

O. Supplies of ATF Form 5530.5 may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Telephone number: (703) 455-7801.

PAPERWORK REDUCTION ACT NOTICE. This request is in accordance with the Paperwork Reduction Act of 1980. This form is used by ATF to determine if the product is nonbeverage in character so that the manufacturer may file for drawback of taxes. The information is required to obtain a benefit.

The estimated average burden associated with this collection of information is 0.5 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0379), Washington, DC 20503.

Form Approved: OMB No. 1512-0379 ( )

SUPPORTING DATA FOR NONBEVERAGE DRAWBACK CLAIMS

(Page ___ of ___)

PART I -- Identification Data

1. Name of Claimant: _____

Address: _____

2. Period covered (Check one)

___ Quarter ___ Month

Ending: _____

3. Control Number on Special Tax Stamp

4. Tax Year Covered by Special Tax Stamp

PART II - Distilled Spirits Account (in proof gallons, except lines 1-2)

Was a physical inventory taken as required by 27 CFR 17.167(a)? (Check one.) ___ Yes. ___ No. (Explain "No" in Part IV.)	New Spirits (eligible, not previously used in intermediate or nonbeverage products) (a)	SPIRITS RECOVERED: In the Manufacture of Intermediate Products (eligible spirits) (b)	SPIRITS RECOVERED: In the Manufacture of Nonbeverage Products (ineligible spirits) (c)	Eligible Spirits Content of Intermediate Products (d)
1. Kind (optional, except for Puerto Rican or U.S. Virgin Islands spirits, and imported rum)				
2. Effective Tax Rate Per Proof Gallon	$ | $	$ | $	XXXXXXXXXXXXXX XXXXXXXXXXXXX	$ | $
3. On Hand, Start of Period				
4. In Process, Start of Period				
DURING PERIOD: 5. Received		XXXXXXXXXXXXX XXXXXXXXXXXXX	XXXXXXXXXXXXX XXXXXXXXXXXXX	
DURING PERIOD: 6. Recovered	XXXXXXXXXXXXX XXXXXXXXXXXXX			XXXXXXXXXXXXX XXXXXXXXXXXXX
DURING PERIOD: 7. Produced	XXXXXXXXXXXXX XXXXXXXXXXXXX	XXXXXXXXXXXXX XXXXXXXXXXXXX	XXXXXXXXXXXXX XXXXXXXXXXXXX	
8. Gain Recorded by Closing Physical Inventory				
9. Total to Account for (Add lines 3-8)				
DURING PERIOD: 10. Used in Nonbeverage Products				
DURING PERIOD: 11. Used in Intermediate Products			XXXXXXXXXXXXX XXXXXXXXXXXXX	
DURING PERIOD: 12. Otherwise Used (not subject to drawback)			XXXXXXXXXXXXX XXXXXXXXXXXXX XXXXXXXXXXXXX	
13. Loss Recorded by Closing Physical Inventory				
14. On Hand, End of Period				
15. In Process, End of Period				
16. Total Accounted for (Add lines 10-15)				

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ATF F 5530.8 ( )

PART III - Production of Nonbeverage Products (Page ___ of ___)

INFORMATION FROM ATF FORM 1678 OR 5530.5		Ineligible Recovered Spirits Used (proof gals.)	ELIGIBLE SPIRITS USED			FINISHED PRODUCT PRODUCED	
Name of Product (a)	Formula No. (or "NF," "USP" or "HPUS") (b)	(c)	Kind (P.R. or V.I. spirits, imported rum, other kinds) (d)	Drawback Rate (= $1.00 less than effective tax rate) (e)	Amount Used (proof gals.) (f)	Amt. Produced (wine gals., except dry products) (g)	Alcohol Content by Volume (h)
1.				$			%
2.				$			%
3.				$			%
4.				$			%
5.				$			%
6.				$			%
7.				$			%
8.				$			%
9.				$			%
10.				$			%
11.				$			%
12.				$			%
13.				$			%
14.				$			%
15.				$			

PART IV - Additional and Explanatory Information

I certify, under the penalties of perjury, that the data submitted on this form are correct, to the best of my knowledge.	Signature & Title:	Date:

ATF F 5530.8 ( )

INSTRUCTIONS

(a) General. (1) Each claim for drawback shall be accompanied by supporting data containing the information presented by this form. Regulations pertaining to this form are found in 27 CFR 17.147. All quantities of spirits shown shall be in proof gallons.

(2) Modifications of this form may be used without prior authorization, as long as all required information pertinent to the manufacturing operation is shown. If certain lines or columns do not apply to an operation, then such lines or columns may be omitted. In omitting lines or columns, the letter or numerical designations of the remaining lines and columns shall not be changed. A continuation sheet for persons claiming on more than 15 products in Part III is on the reverse of these instructions.

(3) This form may be used by persons claiming drawback on nonbeverage products brought into the U.S. from Puerto Rico or the U.S. Virgin Islands under the provisions of 27 CFR Part 250, as well as by domestic manufacturers claiming drawback under 27 CFR Part 17. Certain instructions that only pertain to one of these types of claimants are so indicated. Such instructions are not to be confused with instructions pertaining to use, by domestic manufacturers, of Puerto Rican or Virgin Islands spirits.

(4) Supplies of this form may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, VA 22153; tel. (703) 455-7801.

(b) Part II. (1) Persons filing claims under 27 CFR Part 250 for Puerto Rican or Virgin Islands products are not required to complete Part II.

(2) Separate accounts shall be kept under Part II for spirits taxpaid at different effective tax rates. Separate accounts shall also be kept for: (A) spirits from Puerto Rico containing at least 92% rum, (B) spirits from the U.S. Virgin Islands containing at least 92% rum, and (C) imported rum. These separate accounts shall be maintained in columns (a), (b) and (d). Only a single account is needed in column (c), since spirits reported there are ineligible for drawback. If desired, additional separate accounts may be kept for other "kinds" (e.g. alcohol of various proofs in column (a), different products in column (d), etc.).

(3) In line 4, spirits "in process" are spirits contained in unfinished intermediate products or unfinished nonbeverage products prior to the time of use of the spirits as determined under the principles of § 17.152. Spirits in process are distinguished by their source; thus, for example, spirits "in process" in an unfinished intermediate product would appear in column (a) if the spirits had not been previously used, but they would appear in column (d) if they had come from other intermediate products.

(4) Any gain reported in columns (a), (b), or (d) of line 8 shall be reflected by an equivalent deduction from the amount of drawback claimed. Such a gain shall not be offset by losses in other columns.

(5) Note that column (d) only calls for the eligible spirits content of intermediate products, not the full volume of such products.

(c) Part III. (1) For claimants under 27 CFR Part 250: Columns (c) and (d) are not required; column (e) is not required, but if completed should read "$9.50"; column (f) should be used to state the proof gallons contained in each product (which may be less than the amount used).

(2) In column (b), if a formula was adopted from another plant under § 17.125(b), the plant from which the formula was adopted shall be indicated in addition to the formula number. This may be done by a letter or other symbol if the meaning is explained in Part IV.

(3) In column (c), show only spirits recovered in the manufacture of nonbeverage products (i.e. spirits from the account in column (c) of Part II). Note that usage of other ineligible spirits (e.g. spirits derived from other nonbeverage products) is not reported in Part III. Domestic U.S. manufacturers must record such usage in batch records.

(4) If spirits of more than one kind, or taxpaid at more than one effective tax rate, were used during the claim period in any nonbeverage product, then the number of proof gallons for each kind and for each drawback rate shall be shown separately in columns (d) and (e).

(5) In column (d), imported rum shall be distinguished from other rum; spirits from Puerto Rico or the Virgin Islands shall be distinguished by their place of origin if (and only if) they contain at least 92% rum.

(6) Yield of finished product (column (g)) shall be shown in wine gallons. For dry products, yield shall be shown in the same units used to express yield in the approved formula, ATF Form 1678 or 5530.5.

(7) If distilled spirits were added, as described in § 17.152(c), to a batch of nonbeverage product that was recorded as completed during a previous claim period, such addition shall be recorded on a separate line in Part III. The amount shown in column (f) in such a case shall be only the additional volume of finished product created by addition of the spirits, and words such as "addition after assay" shall be added in column (a).

(d) Part IV. (1) Part IV shall contain an explanation of any discrepancies (gains or losses) in the distilled spirits account (Part II) recorded by the physical inventory required in § 17.167(a).

(2) For domestic U.S. claimants under 27 CFR Part 17 only: If imported rum, or spirits from Puerto Rico or the U.S. Virgin Islands containing at least 92% rum, were used subject to drawback in nonbeverage products, Part IV shall state the total number of proof gallons so used during the claim period for each of those three categories. Such amounts shall include eligible spirits or rum from intermediate products and eligible recovered spirits. Ineligible spirits shall not be included.

(3) For domestic U.S. manufacturers: If a deduction was taken from the amount of drawback claimed, due to a gain in a shipment of spirits received (as required by § 17.162(d)) or to a gain in spirits on hand (as required by § 17.147(b)), this shall be noted in Part IV.

(4) For claimants under 27 CFR Part 250 only: Part IV shall state the name and address of the manufacturer of each product (if different from the claimant), the date of entry into the U.S., and the evidence of tax-payment as required by § 250.173(c)(2)(viii) or § 250.309(c)(2)(viii).

PAPERWORK REDUCTION ACT NOTICE.

This request is in accordance with the Paperwork Reduction Act of 1980. This form is used by ATF to verify that products on which drawback is claimed were made according to approved nonbeverage formulas, and that regulatory requirements have been met. The information is required to obtain a benefit.

The estimated average burden associated with this collection of information is 1 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0379), Washington, DC 20503.

ATF F 5530.8 ( )

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August 31, 1992

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 192

Regulatory Review; Gas Pipeline Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS-124; Notice 1]

RIN 2137-AC25

Regulatory Review; Gas Pipeline Safety Standards

Dated: July 15, 1992.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change miscellaneous gas pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from the regulatory review RSPA carried out in response to the President's directive on reducing the burden of government regulation. The proposed changes would reduce costs in the gas pipeline industry without compromising safety.

DATES: RSPA invites interested persons to submit comments by September 30, 1992. Late filed comments will be considered as far as is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: A. Garnett, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, regarding copies of this notice or other material that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

In a January 28, 1992, memorandum, President Bush wrote to Department and agency heads about the need to reduce the burden of government regulation. The President was concerned that agencies were not doing enough to review and revise existing regulations to eliminate unnecessary and overly burdensome requirements. He recognized that regulations that do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

The memorandum called for a 90-day moratorium on issuing certain proposed or final regulations. The President asked agencies to use that period to review their existing regulations to identify those that are not cost-effective and to determine which could be more goal-oriented, could include market mechanisms, and could be clearer to avoid needless litigation. Each agency was asked to propose, as soon as possible, administrative changes to correct any problems the review found.

In response to the President's memorandum, DOT published a notice requesting public comment on the Department's regulatory programs (57 FR 4745; Feb. 7, 1992). Commenters were asked to identify regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or Federal regulations. The deadline for submitting comments was March 2, 1992.

RSPA received comments from 39 persons and organizations about the pipeline safety regulations in part 192. Most of the comments came from regulated pipeline companies, pipeline trade associations, and state pipeline safety agencies. RSPA has carefully considered all the comments in its review of the regulations. Some comments will be considered in future rulemakings. Additionally, RSPA is preparing a separate rulemaking "Update of Standards Incorporated by Reference" which updates the editions of the industry standards that are set out in part 192.

One suggested change to part 192 that requires further study involves small gas distribution systems, such as master meter systems and petroleum gas systems serving mobile home or apartment complexes. The National Association of Pipeline Safety Representatives has recommended that RSPA develop separate, more appropriate safety standards for these systems in a new part to title 49 of the Code of Federal Regulations. RSPA invites persons interested in this topic to comment on whether such standards should be published.

Of the various pipeline regulations, the review showed that changes to the gas regulations in part 192 would result in the largest single cost savings. Therefore, changes to part 192 have the highest priority.

By memorandum of April 29, 1992, the President continued the moratorium on certain proposed and final regulations for 4 more months. With regard to the review of existing regulations, he requested that agencies publish proposed changes that require public comment as soon as possible.

Proposed Changes to Part 192 Safety Standards

The following discussion explains the changes RSPA proposes to various standards in part 192:

Section 192.1(b)(1) Scope of part. This section currently states that part 192 does not apply to the offshore gathering of gas upstream from the outlet flange of each facility on the outer continental shelf (OCS) where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. RSPA proposes to delete the phrase "on the outer continental shelf", and to apply to the same exception to similar pipelines in state offshore waters.

The current regulations are not clear where the applicability of part 192 begins on offshore gathering lines in state waters. Shell Offshore, Inc. proposed a similar change in comments to an NPRM proposing to better define gathering lines (56 FR 48505; September 25, 1991; Docket PS-122).

This revision will clarify that part 192 does not apply to field production lines, i.e., flow lines, in state offshore waters, similar to the present exception on the OCS. Part 192 regulations are currently being applied to some production lines in state offshore waters where such regulations were not intended to apply. The drug testing requirements in part 199 are also being applied to workers on some production platforms in state offshore waters where such regulations were not intended to apply. The proposed revision would make federal and state offshore rules consistent and should reduce operating expenses for the operator.

Section 192.3 Definitions (transmission line). In part 192, the term "transmission line" means "a pipeline, other than a gathering line, that (a) transports gas from a gathering line or storage facility to a distribution center or storage facility; (b) operates at a hoop stress of 20 percent or more of SMYS; or (c) transports gas within a storage field." This definition was based on the definition of "transmission line" in the 1968 edition of the *USAS B31.8 Code.* Although DOT intended the part 192 definition to have the same meaning as the B31.8 Code definition, the part 192 definition omits the term "large volume customer," which marked an end of a transmission line in the B31.8 Code definition. Despite the omission, RSPA has interpreted the part 129 definition of

transmission line to include pipelines that transport gas from gathering lines or transmission lines to large volume customers, such as a power plant or factory. RSPA proposes to clarify this application of part 192 by adding the term "large volume customer" to the transmission line definition in § 192.3.

The definition of Secretary would be amended to eliminate the connotation of gender.

Section 192.5 Class locations. Section 192.5 classifies the location of onshore pipelines on a scale that increases from 1 to 4 according to the number of buildings in an area. The area extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline. However, if the area contains a cluster of buildings that by itself would qualify the area as Class 2 or 3, § 192.5(f) provides that the classification ends 220 yards from the nearest building in the cluster.

Comments from Enron Corporation, Northern Illinois Gas, and the RSPA internal regulatory review, indicated that some operators may not understand this cluster exception and add all the buildings in a 1-mile area to those in any cluster, determining a higher than required classification for the area. Because part 192 regulates pipelines more stringently as class location increases, any over-classification results in needless expenditures. RSPA proposes to clarify § 192.5 to minimize the possibility of over-classification of pipeline locations.

Section 192.7 Incorporation by reference. Section 192.7 sets out the general requirements for the incorporation in the regulations of industry standards for the design, construction and operation of gas pipelines. Paragraph 192.7(a) states that incorporation of a document by reference has the same force as if the document were copied in the regulations. Some operators have misinterpreted this section to mean that they must comply with all of the terms contained in a referenced document. RSPA proposes to revise § 192.7(a) to clarify that an entire standard is not incorporated when the document is incorporated by reference; rather, only those portions specifically referenced in the regulations are incorporated.

Section 192.9 Gathering lines. This section requires operators of gathering lines to comply with part 192 standards applicable to transmission lines. The requirements do not apply, however, to certain rural gathering lines that part 192 does not cover, as provided in § 192.1(b). Section 192.9 would be revised to highlight this limit on applicability. With a clear understanding of which gathering lines must meet transmission line requirements, operators should improve the efficiency of their compliance efforts. The proposed change would not reduce safety because it does not alter the scope of the existing regulation.

Section 192.11 Petroleum Gas Systems. (Also includes changes to §§ 192.1 and 192.3): Section 192.11 requires petroleum gas systems covered by part 192 to comply with National Fire Protection Association (NFPA) Standards No. 58 and No. 59 and other part 192 standards. Petroleum gas systems are pipeline distribution systems comprised of a liquefied petroleum gas (LPG) storage tank (or cylinder), piping, and other facilities to distribute petroleum gas (instead of natural gas) to customers who consume the gas. The systems covered are those that serve 10 or more customers, or fewer than 10 if any portion of the system is in a public place. However, RSPA has interpreted § 192.11 not to apply to systems where a single tank serves a single customer on the customer's premises even if part of the system is in a public place.

Petroleum gas is defined in § 192.11(c) as "propane, butane, or mixtures of these gases, other than a gas air mixture that is used to supplement supplies in a natural gas distribution system." Because of the petroleum "gas air mixture" exclusion, which was intended to exclude from § 192.11 natural gas distribution systems that transport such mixtures, RSPA has not enforced NFPA Standards No. 58 and No. 59 against LPG peak shaving plants. Operators of natural gas systems use LPG peak shaving plants in cold weather to augment natural gas supplies with mixtures of petroleum gas and air. Nevertheless, we have said these plants are pipeline facilities subject to all other requirements of part 192; there is no doubt NFPA intended Standards No. 58 and 59 to cover such plants.

NFPA petitioned RSPA to clarify the coverage of NFPA Standards No. 58 and No. 59 under § 192.11 (P–44; November 30, 1989). NFPA also requested that the definition of petroleum gas be amended to be more consistent with the definitions used in the NFPA standards. The Florida LP Gas Pipeline Advisory Committee (see Hillsboro Gas Company comments in Docket RR–1), an industry group that advises the Florida Division of Liquefied Petroleum Gas, the state regulatory agency on LPG matters, supported the petition. Because both pipeline industry and state safety officials have had difficulty understanding the existing rule, RSPA agrees that revisions are needed.

RSPA proposes to revise § 192.11(a) to provide that LPG peak shaving plants must comply with NFPA Standards No. 58 and No. 59 and the applicable part 192 standards. NFPA Standards No. 58 and No. 59 would not apply to natural gas distribution systems downstream from the point where petroleum gas/air mixtures are combined with natural gas. Section 192.11(b) would be revised to clarify that all regulated petroleum gas systems, including systems that carry petroleum gas and air mixtures, must meet NFPA Standards No. 58 and No. 59 and other applicable part 192 standards. The current rule that part 192 prevails if a conflict exists with an NFPA requirement would be revised under a proposed revision of § 192.11(c) to provide that the NFPA requirement would prevail. RSPA's experience shows the NFPA rules are updated regularly to include state of the art technology and should be given priority. However, if the NFPA standards are silent or nonspecific (such as for corrosion protection of the system), the operator would be required to comply with part 192 requirements.

In addition, this notice proposes to redefine "petroleum gas" to be consistent with current commercial usage. The changes should reduce confusion in knowing which standard to follow, and should result in increased operator efficiency in designing, operating and maintaining petroleum gas systems. The revised definition would appear in § 192.3 instead of § 192.11. Also, those petroleum gas systems that are not subject to part 192 would be stated in § 192.1, "Scope of part," instead of § 192.11.

RSPA currently incorporates by reference the 1979 editions of NFPA Standards No. 58 and 59, as shown in appendix A of part 192. The 1979 edition of NFPA Standard No. 58 does not permit the use of mechanical fittings for making polyethylene joints. In a concurrent rulemaking (referenced above), RSPA is updating appendix A to incorporate the 1992 edition of NFPA Standard 58, which allows the use of mechanical fittings for certain pipe. RSPA will not enforce the prohibition against mechanical fittings on these pipe in the interim should this rulemaking be concluded before the appendix is updated.

Section 192.14 Conversion to service subject to this part. (Also includes changes to § 192.553 General requirements.): Section 192.14 establishes various criteria for qualifying a pipeline previously used in service not subject to part 192 for use under part 192. Section 192.14(a)(1)

requires that the design of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in a satisfactory condition for safe operation. Section 192.14(a)(4) requires that the pipe must be hydrostatically tested in accordance with subpart J to substantiate the maximum allowable operating pressure (MAOP) permitted by subpart L.

Section 192.553 establishes general requirements for increasing the MAOP (uprating) a pipeline. Section 192.553(d) limits a new MAOP established under part 192 to the maximum that would be allowed under part 192 for a new segment of pipeline constructed of the same materials in the same location. Neither section provides for verifying design calculations or limiting MAOP when one or more of the steel pipe variables necessary for the determination of design strength or MAOP are unknown.

ANR Pipeline Company suggested using a hydrostatic test to establish the yield strength of pipelines for which yield strength is not known. The ASME B31.8 Code does not directly provide for hydrostatic testing to determine the yield strength of pipe (ASME B31.8 Code for Pressure Piping for Gas Transmission and Distribution Systems), paragraph 845.214, Qualification of a Steel Pipeline or Main to Establish the MAOP). However, the Code provides for establishing MAOP on the basis of hydrostatic testing of existing natural gas pipelines or of pipelines being converted to natural gas service where one or more of the factors in the design formula are unknown. The test pressure used in the referenced Code MAOP calculation is limited to the test pressure obtained at the high elevation point of the minimum strength test segment and to the pressure required to produce a stress equal to the yield strength as determined by hydrostatic testing. The procedure for determining yield strength by hydrostatic testing is included in B31.8 appendix N, Recommended Practice for Hydrostatic Testing Pipelines in Place.

RSPA proposes to change §§ 192.14(a)(1) and 192.553(d) to permit verifying the design pressure and establishing a new MAOP for steel pipelines when one or more of the variables necessary for determining those pressures are unknown by (1) testing the pipeline in accordance with ASME B31.8, appendix N, to produce a pressure equal to yield strength, and (2) applying to not more than 80 percent of the first pressure that produces yielding the appropriate factors in § 192.619(a)(2)(ii) and proposed § 192.619(a)(2)(iii).

The proposed change will enable the conversion or uprating of certain pipelines, or reduce the cost of conversion or uprating of certain pipelines, and will enable the operation of the lines at their fullest potential.

The proposed change should not have an adverse effect on pipeline safety. To determine the MAOP at a stress equivalent to the yield strength of the pipe in the affected pipelines, testing the lines to hydrostatic pressures greater than otherwise required for the determination of the MAOP under § 192.619 will be necessary. The result will be a greater margin of safety between hydrostatic test pressure and MAOP. Any defects present in the pipeline will likely fail during hydrostatic testing and be removed from the line.

Section 192.107 Yield strength (S) for steel pipe. Paragraph 192.107(b) provides that, for pipe that is manufactured in accordance with a specification not listed in section I of part 192's appendix B or whose specification or tensile properties are unknown, the yield strength (S) to be used in the design formula in § 192.105 is the lower of the following criteria if the pipe is tensile tested in accordance with section II–D of appendix B:

(i) 80 percent of the average yield strength determined by the tensile tests.

(ii) The lowest yield strength determined by the tensile tests, but not more than 52,000 p.s.i.

ANR Pipeline Company (ANR) suggested that the yield strength limitation in § 192.107(b)(1)(ii) to a maximum of 52,000 p.s.i. is out-dated. The 52,000 p.s.i. yield strength limit was developed and published in the ASME B31.8 Code for Pressure Piping, Gas Transmission and Distribution Piping Systems when the highest strength pipe commercially available had a specified minimum yield strength (SMYS) of 52,000 p.s.i. ANR argued that since then, pipe materials with higher yield strengths of 60,000, 65,000 and 70,000 p.s.i. have become commercially available and due to the current limitation, good, conditioned pipe lacking tensile property documentation is being under-utilized. ANR suggested that the maximum of 52,000 p.s.i. be increased to a value reflecting current pipe usage.

Instead, RSPA is proposing to remove the 52,000 p.s.i. SMYS limitation. By permitting an increase in the maximum value of the minimum yield strength determined by tensile test, utilizing a higher "S" value that is more representative of the true properties of the material as the basis for design will be possible. An increase will permit the use of some pipe lacking original tensile property documentation in higher design pressure applications where the only current alternative is the purchase of new pipe at market prices.

This change will have no impact on pipeline safety. If the maximum value of 52,000 p.s.i. were deleted as proposed, the two remaining § 192.107(b)(1) alternative criteria for the design value would provide adequate limitation of the yield strength used for design. The normal statistical distribution of yield strength for a uniform lot of steel pipe is such that a value equal to 80 percent of the average yield strength determined by tensile test usually will be less than the specified minimum yield strength. For example, unidentified pipe originally made as Grade X65 (65,000 p.s.i. SMYS) with an average mill test yield strength of 78,000 p.s.i., an exceptionally high average, could be used in the design formula as 62,400 p.s.i. A lower average yield strength determined by tensile test would result in a design yield strength less than 62,400 p.s.i. The alternative criterion, based on the lowest actual yield strength determined by test, is unlikely to be less than 80 percent of the average yield strength, except in the case of a lot of pipe with exceptionally high scatter in the test results, in which case the alternative protects against an average based on a skewed statistical distribution. Under either criteria, the yield strength value determined by test for use in the design formula will provide a reasonable conservative design pressure.

Section 192.121 Design of plastic pipe. This regulation establishes the design pressure for plastic pipe in accordance with the design formula, specified in § 192.121, and design limitations specified in § 192.123. RSPA recommends that an alternative formula, commonly used by industry, be added to provide greater flexibility and consistency with industry practices. The following formula would be added to § 192.121 to provide an alternative method of determining the design pressure for plastic pipe based on the Standard Dimension Ratio (SDR), often marked on the exterior surface of plastic pipe:

$$P = \frac{2S}{(SDR-1)} 0.32$$

The SDR, a common industry parameter, is the ratio of average specified outside diameter to minimum specified wall thickness in accordance with a preferred numbering system.

This proposed alternative formula would not compromise pipeline safety because it produces identical results to the existing formula. This formula differs only in its use of the SDR which avoids having to determine the outside diameter and wall thickness of the pipe.

Section 192.123 Design limitations for plastic pipe. This regulation establishes design limitations for the use of plastic pipe in natural gas pipelines. Several operators recommended that § 192.123(b)(1) be amended to reflect advancements in plastic pipe technology proven to provide safe transportation of natural gas by pipeline at temperatures below the current limit of −20°F RSPA proposes to lower the existing operating temperature limit from −20°F to −40°F, to give operators greater liberty in selecting plastic pipe for use in natural gas pipelines. In November 1979, RSPA granted a waiver to this regulation. Additionally, RSPA proposes to clarity § 192.123(b)(2). This section sets the maximum operating temperature for thermoplastic and reinforced plastic pipe to the temperature at which the long-term hydrostatic strength was determined. For pipelines manufactured before May 18, 1978, this section permits operation at temperatures up to 100°F even if the long-term hydrostatic strength was not determined at that temperature. RSPA proposes to amend § 192.123(b)(2) to clarify the upper operating temperature limit for thermoplastic pipe. The proposed change will not affect pipeline safety; rather, it clarifies the regulation in order to reduce misinterpretation.

Section 192.179 Transmission line valves. This rule establishes standards for spacing of transmission line sectionalizing block valves according to population density in the vicinity of the pipeline. ANR Pipeline Company stated that the current requirement for fixed valve spacing does not make sense and imposes needless costs. ANR proposed that the regulation be changed to permit the operator to determine the valve spacing. ANR said that initial damage is done within a very short time after a pipeline failure and that the spacing of valves will not limit the initial damage. ANR further stated that there is no danger to the public since natural gas is lighter than air, and the gas flowing from the pipeline will normally travel up (directly into the atmosphere) from the failure site.

RSPA recognizes that transmission line sectionalizing block valves are expensive; however, RSPA believes they are necessary to ensure pipeline safety. Therefore, to reconcile these competing interests, RSPA proposes to revise § 192.179(a) to allow the Administrator to approve other spacing of the sectionalizing block valves in those segments of a transmission line where the operator demonstrates a resulting equivalent level of pipeline safety. This revision accelerates the approval process and may reduce pipeline installation costs.

Section 192.203 Instrument, control, and sampling pipe and components. Section 192.203(b)(2) requires the installation of a shutoff valve in each takeoff line of a regulator station. The regulator controls line pressure downstream from the regulator. Mooney Controls, a manufacturer of pre-piped regulators and valves, petitioned that the requirement to install control valves on pre-piped regulators and valves be changed. Mooney's petition followed a Missouri Public Service Commission grant of waiver exempting the City of Perryville, Missouri from installing such valves on their system. Perryville's regulators are not pre-piped. RSPA proposes to revise the regulation to require shutoff valves only in those regulator stations, pre-piped or otherwise, where necessary to isolate the regulator from gas line pressure. The main purpose of the shutoff valve is for testing the regulator to insure its functions properly; therefore, RSPA expects no loss of safety if the station can be isolated between inlet and outlet valves.

Section 192.227 Qualification of welders and § 192.229 Limitations on welders. Welders qualified under § 192.227(a) are required under § 192.229 to requalify every 6 months, and welders qualified under § 192.227(b) are required to requalify every 15 months. Moreover, § 192.227(b) qualification is less comprehensive than qualification under § 192.227(a) because welders who qualify under § 192.227(b) may only weld on pipe that will be subjected to a hoop stress of less than 20 percent of SMYS. The Minnesota Office of Pipeline Safety (MnOPS) stated that many Minnesota operators would like to qualify welders under § 192.227(a) because those qualification requirements provide a better indication of the quality of the test weld. MnOPS also stated that operators would like the option to requalify under § 192.227(b) those who weld only on lines operating at less than 20 percent of SMYS. MnOPS believes that requalification requirements should be more appropriately based on the stress level of the pipe being welded rather than on the initial qualification.

Thus, RSPA proposes to revise §§ 192.227 and 192.229 to allow those who weld on lines operating at less than 20 percent of SMYS to qualify initially under either § 192.227(a) or § 192.227(b) and requalify under § 192.227(b). Those who weld under § 192.227(a) requirements would still be required to requalify under § 192.227(a). Pipeline safety would not be compromised, the rules would be more flexible, and compliance costs would be reduced.

Section 192.241 Inspection and test of welds. Section 192.241 establishes the requirements for inspection and test of welds made on steel materials in pipelines except welds that occur during the manufacture of pipe and pipeline components. Under paragraph (c), the acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. In response to a petition by the American Petroleum Institute (API), the Seventeenth Edition of API Standard 1104, except the appendix, was incorporated by reference in parts 192, 193, and 195 by notice in the **Federal Register** (54 FR 27881; July 3, 1989). The appendix provides more liberal acceptance standards for certain weld flaws based on widely accepted fracture mechanics principles. In its notice, RSPA stated that the fracture mechanics model contained in the appendix could not be adopted as a Federal weld acceptance standard without the opportunity for public comment.

The American Gas Association, Midcon Corporation, and the internal regulatory review suggest that incorporation by reference should include the appendix, as requested in API's petition. API's petition was supported by research that confirmed the conservatism of the fundamental approach for flaw assessment in the appendix.

Accordingly, RSPA proposes to modify § 192.241(c) to permit the use of the appendix in API Standard 1104 as an alternative acceptance standard for flaws, except cracks, in girth welds. RSPA proposes to except cracks from evaluation under the Appendix because a crack is a flaw that results from a localized stress that is greater than the strength of the steel and that has the potential to increase in size when subjected to additional stress. Also, accurate measurement of the depth of a crack, a measurement needed for evaluation, is difficult.

By allowing the operator to elect to use the Appendix for certain pipelines,

the proposed change will reduce construction costs by eliminating the need to make weld repairs or replacements otherwise required under API section 6. The proposed change affects only acceptance criteria for girth welds. Historically, defects in girth welds are an infrequent contributor to pipeline accidents. Furthermore, considering the conservatism attributed to the approach to flaw assessment in the appendix, the proposed change should have no detrimental effect on pipeline safety or the environment.

Section 192.243 Nondestructive testing. Paragraph (d)(4) requires the 100 percent nondestructive testing at pipeline tie-ins of the field butt welds covered under paragraph (d). RSPA proposes to amend paragraph (d)(4) to add the phrase "including tie-ins of replacement sections." The proposed revision would improve clarity and understanding of the interpretation of "tie-ins." However, the proposed revision would not compromise safety because the change merely improves understanding of the intent of the regulation.

Section 192.281 Plastic pipe. This rule establishes minimum requirements for joining plastic pipe. Section 192.281(c) would be revised to include electrofusion as an accepted method of heat-fusion for joining polyethylene pipe. The proposed change would reduce regulatory burden by expanding the options available to operators for joining polyethylene pipe. Pipeline safety would not be compromised by adopting electrofusion because it is already widely used in the pipeline industry and has proven to work safely and reliably to join polyethylene pipe.

Section 192.283 Plastic pipe; qualifying joining procedures. This section establishes criteria for qualification of joining procedures for plastic pipe. RSPA proposes adopting the ASTM F1055–87 standards for joining polyethylene plastic pipe by electrofusion, and adding ASTM Standard F1055–87 to appendix A.II.B. Adoption of this standard would provide operators greater flexibility in selecting methods for joining polyethylene pipe. However, the proposal would not compromise pipeline safety because electrofusion is already in widespread use and its history of application has not revealed any risk to the safe transportation of natural gas.

Section 192.317(a) Protection from hazards. This section requires that gas transmission lines and mains be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads. Additionally, offshore pipelines must be protected from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations. RSPA recognizes that some gas pipelines are in locations where complete protection of the pipe from the cited hazards is not feasible and proposes to change the regulation to recognize that reality. Therefore, this notice proposes to amend the section to require the operator to take all practicable steps to protect gas pipelines from the cited hazards. The proposed revision would not compromise safety but would avoid needless discussion over the interpretation of the phrase "must be protected," when applied to certain locations.

Sections 192.319(c) and 192.327(e) Burial of offshore pipe. Under § 192.319(c), all offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. For offshore pipe installed under water less than 12 feet deep, as measured from mean low tide, § 192.327(e) requires a minimum cover of 36 inches in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom, unless an underground structure prevents installation with the minimum cover, and the pipe is additionally protected to withstand anticipated external loads.

At the same time, a recently adopted rule, § 192.612(b)(3), requires operators to provide similar cover, without exception for underground structures, over pipelines in the Gulf of Mexico and its inlets under water less than 15 feet deep, if the pipelines are exposed or a hazard to navigation (Amendment 192–67; 56 FR 63764; Dec. 5, 1991). Section 192.3 defines "hazard to navigation" as "a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water." The term "Gulf of Mexico and its inlets" is defined to include only areas under 15 feet of water.

We see that § 192.319(c) is inconsistent with § 192.612(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 15 feet deep but at least 12 feet deep, because § 192.319(c) permits the pipe to be without cover or to be above the seabed if properly protected. Such pipe is a "hazard to navigation" under the definition of that term in § 192.3, and must have the minimum cover that § 192.612(b)(3) requires. In addition, § 192.327(e) is inconsistent with § 192.612(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 12 feet deep. In certain instances, § 192.327(e) allows that pipe to be without cover or less than 12 inches below the seabed, and neither condition is allowed under § 192.612(b)(3). In light of these inconsistencies, RSPA proposes to amend §§ 192.319(c) and 192.327(e) to correct the problem.

Section 192.321 Installation of plastic pipe. Paragraph (a) requires that plastic pipe be installed below ground level. RSPA proposes to allow, for a temporary period not exceeding 30 days, use of plastic pipe above ground level. The proposed revision would limit the use of the pipe to locations where it is unlikely to be damaged (or is protected from damage) by external forces. Moreover, the properties of the pipe must be suitable for its exposure to ultra violet light and temperature extremes. The proposed revision would provide the operator an option that may result in lower material and installation costs. However, safety would not be compromised because the temporary use of the pipe is limited to installations where the properties of the pipe are suitable for or protected from exposure and external forces.

Section 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971. Paragraph (a)(2) requires a pipeline to have a cathodic protection system designed to protect the pipeline in its entirety. RSPA recognizes that the phrase "in its entirety" is redundant and misleading, and proposes its removal. It is redundant because the term "pipeline" as used in part 192, means all facilities through which gas flows, unless otherwise specified. It is misleading because some operators understand the phrase to include metallic casings. But under the "pipeline" definition in § 192.3, a casing is not part of the pipeline. The proposed change would avoid confusion. However, the proposed revision would not compromise safety because it would merely express the intent of the regulation with greater clarity and certainty.

Paragraph (f)(1) states that the external corrosion control requirements do not apply to electrically isolated metal alloy fittings in plastic pipelines if for the size fitting used, an operator can show through various means that adequate corrosion control is provided by alloyage. RSPA recognizes that the word "alloyage" is not common usage and proposes its replacement with "alloy composition." to improve understanding.

Section 192.475 Internal corrosion control: General. Existing § 192.475(c) limits hydrogen sulfide content of natural gas stored in pipe-type or bottle-type holders to 0.1 grain per 100 standard cubic feet of gas. Columbia Gas Transmission Corporation proposed that the rule be relaxed to allow a concentration of 0.25 grain per 100 standard cubic feet of gas.

Because the 0.25 limit is within customary industry contract limits and is still lower than maximum allowable safe limits, RSPA proposes to increase the allowable hydrogen sulfide limit in gas to be stored in pipe-type and bottle-type holders to 0.25 grain per 100 standard cubic feet of gas. This action would lower the cost of processing natural gas that contains small quantities of hydrogen sulfide.

Section 192.485 Remedial measures: Transmission lines. Paragraph (a) requires that each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for the maximum allowable operating pressure of the pipeline must be replaced or the operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so clearly grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

Paragraph (b) requires that each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe, based on the actual remaining wall thickness in the pits.

RSPA recognizes that paragraphs (a) and (b) provide no guidance for an operator's use in determining the strength of the remaining wall thickness of corroded steel pipe. To provide this needed guidance, RSPA proposes the adoption of the ASME Manual B31G procedure for determining the remaining strength of corroded steel pipe in existing pipelines. Application of the procedure would be in accordance with the limitations set out in the B31G Manual. The proposal would provide guideline information as to whether a corroded region (not penetrating the pipe wall) may be left in service; an option that might require a reduction in maximum allowable operating pressure, but may be more economical than the replacement or repair of the corroded pipe. The proposed revision would not compromise safety because it merely accepts an established pipeline industry guideline, and does not impose any new requirements on the operators.

Section 192.491 Corrosion control records. Anode Locations. Paragraph (a) requires an operator to maintain records or maps showing the location of cathodically protected piping, cathodic protection facilities, other than unrecorded anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system. The Arizona Corporation Commission stated that records and maps showing the specific location of millions of individual galvanic anodes throughout the gas pipeline systems are not needed because many anodes have deteriorated and do not exist except for the connecting wire. Furthermore, Arizona said that the specific location of a galvanic anode is of little value to the operator or to pipeline safety.

RSPA proposes to eliminate this requirement. The proposed change would relieve operators of the burden of making precise field measurements and preparing and maintaining records and maps showing the specific location of millions of individual anodes. However, the proposed revision would not compromise safety because records or maps can show that a stated number of anodes were installed in a certain manner or spacing between particular reference points along the pipeline. Moreover, it is more common and practical to use electrical measurements to determine individual locations if locating individual anodes is necessary.

Record Retention

Under § 192.491(b), the retention period for records of corrosion control tests, surveys, and inspections is the service life of the pipeline. Several pipeline companies suggested we consider shortening this period as a cost saving measure that would not compromise safety.

Besides indicating compliance with the corrosion control standards, records of required tests, surveys, and inspections provide a history that is useful in analyzing corrosion problems that may arise. For some required corrosion control records, a 5-year retention period is adequate for these purposes. However, records used to determine the need for protection provide a valuable basis for comparison with later data and should be retained for the service life of the pipeline. Therefore, the minimum retention period for corrosion control records would be set at 5 years under a proposed change to § 192.491, except that certain data involving corrosion control determinations would still have to be kept for as long as the pipeline remains in service.

Section 192.553 General Requirements. (see previous discussion under § 192.14).

Section 192.607 Determination of class location and maximum allowable operating pressure. This rule required operators to determine the maximum allowable operating pressure, class location, and concurrence of associated hoop stress with class location requirements for segments of pipe which produce hoop stress in excess of 40 percent SMYS. For pipelines with hoop stress not commensurate with applicable class location requirements, the rule required operators to confirm or revise the maximum allowable operating pressures. These determinations had to be completed before April 15, 1971. Subsequent work was required to be completed before July 1973 or December 1974.

The South Carolina Public Service Commission recommended that this regulation be deleted because the time periods for completing the studies and compliance work has passed. Deleting this rule would eliminate irrelevant citations and simplify the remaining applicable regulations. Pipeline safety would not be compromised because the rule no longer has application.

Section 192.611 Change in class location. This section requires confirmation or revision of a pipeline's maximum allowable operating pressure (MAOP) within 18 months after a change in class location. As § 192.611(a)(3)(ii) provides, the MAOP that results from confirmation or revision under § 192.611 may not exceed the pipeline's previous MAOP. Any increase in a pipeline's MAOP must be accomplished under the uprating requirements of part 192's subpart K, not § 192.611. However, Enron Corporation pointed out that designating this restriction as § 192.611(a)(3)(ii) suggests that it applies only to confirmations or revisions under paragraph (a)(3), which is not the intent. Therefore, § 192.611(a)(3)(ii) would be redesignated as § 192.611(b), and the existing paragraphs (b) and (c) redesignated as (c) and (d), respectively. Because the proposed change is for clarification only, safety would not be compromised.

Section 192.614 Damage prevention program. Paragraph (b)(2) requires notification of the public in the vicinity of the pipeline and actual notification of persons who normally engage in excavation activities in the area in which the pipeline is located of the

damage prevention program's existence, purpose, and how to learn the location of underground gas pipelines before excavation activities are started. While the paragraph states that "actual" notification is to be given these excavators, no corresponding adjective describes the notification to be given the public in the vicinity of the pipeline. RSPA proposes the insertion of the word "general" to clarify that notification need only be provided by articles or announcements in newspapers, radio or television or other medium of mass communication which are appropriate for the public in the vicinity of the pipeline. The proposed revision would avoid confusion. However, safety would not be compromised because the revision merely expresses the intent of the regulation with greater clarity and certainty.

Section 192.619 Maximum allowable operating pressure: Steel or plastic pipelines. This section establishes various criteria for determining the maximum allowable operating pressure (MAOP) of steel or plastic pipelines, the lowest of which limits the MAOP. Paragraph (a)(4) limits MAOP for furnace butt welded steel pipe to a maximum of 60 percent of the mill test pressure, the same percent applied as the longitudinal joint factor (E) in the design formula under § § 192.105 and 192.113. Paragraph (a)(5) limits MAOP for steel pipe other than furnace butt welded pipe to a maximum of 85 percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by the post installation test.

Enron Corporation proposed that § 192.619(a)(4) and (5) be deleted because mill tests are a quality control test during manufacture. ENRON argued that the only test affects the determination of MAOP should be the in-place hydrostatic strength test.

RSPA proposes to delete § 192.619(a)(4) and (5), but to add a paragraph (a)(2)(iii) applying the longitudinal joint factors for furnace butt welded and lap welded pipe in addition to the appropriate class location factor. The (a)(4) criterion which limits the MAOP of furnace butt welded steel pipe to 60 percent of the mill test pressure will be the applicable criterion in many installations because mill test pressures for this pipe are very low compared to specified minimum yield strength (SMYS). If § 192.619(a)(4) were deleted, no factor would remain to compensate for the low joint efficiency factor assigned to furnace butt welded pipe under § 192.113. For other than furnace butt welded steel pipe, the criterion of limiting MAOP to 85 percent of the mill test pressure is likely to be the applicable criterion for relatively small diameter pipe, because mill test pressure is based on 75 percent of SMYS, unless the operator has elected to test the pipe after construction to a pressure much lower than permitted by the design formula under § 192.105. The current regulations do not consider that § 192.619(a)(5) includes furnace lap welded pipe, which is no longer manufactured but remains in service. When such pipe was available for new construction, the joint efficiency factor for design was 0.8 or 80 percent of SMYS.

The proposed change will permit the operation of many pipelines with furnace butt welded pipe and some with non-furnace butt welded smaller diameter pipe at pressures higher than presently permitted on the basis of mill test pressure. This should result in reduced operating costs for those pipelines. The remaining limitations on MAOP and the application of the longitudinal joint factor in § 192.619(a)(2)(iii) adequately provide for the safe operation of the pipelines affected.

Section 192.625 Odorization of gas. The Oregon Public Utility Commission (Oregon) commented that master meter operators should be exempted from § 192.625(f) which requires sampling of gas to assure the gas contains the proper concentration of odorant. Oregon stated that master meter operators receive their gas from operators who verify by odorometer that the gas is meeting the one-fifth LEL requirement and that it is unnecessarily burdensome for these operators to buy an odorometer or to hire consultants to do this testing. Oregon suggested that instead of an expensive odorometer test, the master meter operator could be required to conduct a "sniff" test. Oregon estimated a savings of 98 percent in consulting fees.

RSPA currently allows master meter operators to (1) have the company that sells them the gas verify by records or tests that the gas meets the required criteria or (2) have a qualified person, the gas utility company, or transmission company, run an odorometer test of the gas in the system. This procedure is spelled out in the Guidance Manual for Operators of Small Gas Systems, U.S. Department of Transportation, 1991. The Manual further states that periodic "sniff" test can be a guide in determining odorization levels even though they do not replace the need to maintain odorant usage records or perform odorometer tests.

Accordingly, the rule proposes that master meter operators may comply with §§ 192.625(a) and (f) by (1) receiving written verification from their gas supplier that gas odorization levels are sufficient, and (2) conducting periodic "sniff" tests to confirm supplier's findings. These "sniff" tests should be run at the outer ends of the system. The operator must document the specific procedures in its Operating and Maintenance (O&M) plan and keep records of the tests, including dates, names and locations. Since some master meter operators are not aware of the flexibility provided in the manual, the proposal should reduce the cost of compliance for those operators.

Section 192.705 Transmission lines: Patrolling. Paragraph (a) requires an operator to have a patrol program to observe cited surface conditions on and adjacent to its gas transmission line right-of-way for indications of activities and other factors affecting the safety and operation of the pipeline. RSPA proposes that the section be changed to indicate that aerial patrols are an optional method of compliance. The proposed change would provide a more effective option for some operators, who may not be aware that aerial patrols of gas transmission lines are acceptable. The proposed revision would not compromise safety because some surface condition activities adjacent to the right-of-way, that affect safety and operation of pipelines, are more visible from an aerial patrol than from walking or driving the right-of-way.

Section 192.709 Transmission lines: Record keeping. Section 192.709 requires operators to keep various records about transmission lines for as long as the line remains in service. ANR Pipeline, Enron Corporation, and the Interstate Natural Gas Association of America suggested this lengthy record retention period could be significantly shortened with no adverse effect on safety. RSPA has considered changes that would not affect the usefulness of these records in determining an operator's level of compliance effort or in constructing the history of an accident or safety problem. Therefore, RSPA is proposing to adopt a 5-year retention period for records of patrols, surveys, inspections and tests. A 5-year retention requirement would assure that these records are on hand during the normal cycle of routine inspection visits by RSPA field inspection personnel. Also, the current service-life retention period appears unnecessary for records of repairs on facilities other than pipe. A retention period of 1 year would be established for such records. Section 192.709 also

would be changed to clarify the information to be recorded.

Section 192.721 Distribution systems: Patrolling. This section governs the frequency at which operators must patrol mains in distribution systems. The regulation is written in performance terms, except that mains located where anticipated movement or loading could cause leakage must be patrolled at intervals not exceeding 4½ months, but at least four times a year. Northern Illinois Gas recommended that we adopt a more moderate patrol frequency as a cost saving measure, but did not recommend an alternative. The option we are considering is twice a year for mains in Class 1 or 2 locations. The lower frequency would correspond to the lower risk in these less densely populated locations. Twice a year checks also would match the frequency at which operators must patrol transmission lines at highway and railroad crossings in Class 1 and 2 locations (§ 192.705). Because these transmission line crossings pose a high level of risk, and twice-a-year patrols have proved satisfactory, RSPA believes the proposed change to § 192.721 would not reduce safety.

Rulemaking Analyses

Paperwork Reduction Act

The documentation for the information collection requirements for part 192 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in part 192 are covered by OMB Control Numbers 2137–0049 (approved through October 31, 1994) and 2137–0583 (approved through May 31, 1994). This notice proposed no additional information collection requirements. Instead, the notice proposed to relax the information collection or retention and record retention burden on pipeline operators (described above). Accordingly, there is no need to repeat those submissions with this notice of proposed rulemaking.

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has concluded that this proposal is not a major rule under Executive Order 12291. However, it is "significant" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of the interest expressed by the President and the substantial interest by the pipeline industry.

A Regulatory Evaluation has been prepared and is available in the docket. RSPA estimates the proposed changes to existing rules would result in savings of $33,000,000 per year without associated costs and with no adverse effect on safety. As discussed above, these savings would come largely from the use of new technology, greater flexibility in constructing, maintaining, and operating pipelines, improved clarity, and the elimination of burdensome regulations.

Regulatory Flexibility Act

RSPA criteria for small companies or entities are those with less than $1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. However, RSPA seeks such impact information in response to this rulemaking. Accordingly, based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that this proposal would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Executive Order 12612

RSPA has analyzed the proposed rules under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 would be amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) This part does not apply to:

(1) Offshore pipelines upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed whichever facility is farther downstream; and

* * * * *

(4) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system has only one tank and the system is located entirely on the customer's premises, regardless of whether a portion of the system is located in a public place.

3. In § 192.3, a definition of "petroleum gas" would be added and the definitions of "secretary" and "transmission line" would be revised to read as follows:

§ 192.3 Definitions.

* * * * *

Petroleum gas means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 208 psi at 100 degrees F.

* * * * *

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

* * * * *

Transmission line means a pipeline, other than a gathering line, that:

(1) Transports gas from a gathering line or storage facility to a distribution center, large volume customer, or storage facility;

(2) Operates at a hoop stress of 20 percent or more of SMYS; or

(3) Transports gas within a storage field.

* * * * *

4. Section 192.5 would be revised to read as follows:

§ 192.5 Class locations.

(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section:

(1) A "class location unit" is an onshore area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline.

(2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(1) A Class 1 location is:

(i) An offshore area; or

(ii) Any class location unit that has 10 or fewer buildings intended for human occupancy.

(2) A Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy.

(3) A Class 3 location is

(i) Any class location unit that has 46 or more buildings intended for human occupancy; or

(ii) An area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

(4) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

(c) The length of Class locations 2, 3, and 4 may be adjusted as follows:

(1) A Class 4 location ends 220 yards from the nearest building with four or more stories above ground.

(2) When a cluster of buildings intended for human occupancy requires a Class 3 location, the Class 3 location ends 220 yards from the nearest building in the cluster.

(3) When a cluster of buildings intended for human occupancy requires a Class 2 location, the Class 2 location ends 220 yards from the nearest building in the cluster.

5. Section 192.7 would be amended by revising paragraph (a) to read as follows:

§ 192.7 Incorporation by reference.

(a) Any documents or portions thereof incorporated by reference in this part are included in this regulation as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this part.

* * * * *

6. Section 192.9 would be revised to read as follows:

§ 192.9 Gathering lines.

Each operator of a gathering line, except as provided in § 192.1, must comply with the requirements of this part applicable to transmission lines.

7. Section 192.11 would be revised to read as follows:

§ 192.11 Petroleum gas systems.

(a) Each plant that supplies petroleum gas by pipeline to a natural gas distribution system must meet the requirements of this part and NFPA Standards No. 58 and No. 59.

(b) Each pipeline system subject to this part that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of NFPA Standards No. 58 and No. 59.

(c) In the event of a conflict between this part and the requirements of NFPA Standards No. 58 and No. 59, NFPA Standards No. 58 and No. 59 prevail.

8. Section 192.14 would be amended by revising paragraph (a)(1) to read as follows:

§ 192.14 Conversion to service subject to this part.

(a) * * *

(1) The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables for a steel pipeline necessary to verify the design pressure under § 192.105 or to perform the testing under paragraph (a)(4) of this section are unknown, the design pressure may be verified and the MAOP determined by:

(i) Testing the pipeline in accordance with ASME B31.8 Code, Appendix N, to produce a stress equal to the yield strength, and

(ii) Applying, to not more than 80 percent of the first pressure that produces a yielding, the appropriate factors in §§ 192.619(a)(2)(ii) and (a)(2)(iii).

* * * * *

9. Section 192.107 would be amended by revising paragraph (b)(1) introductory text and paragraph (b)(1)(ii) to read as follows:

§ 192.107 Yield strength (S) for steel pipe.

* * * * *

(b) * * *

(1) If the pipe is tensile tested in accordance with section II–D of appendix B to this part, the lower of the following:

* * * * *

(ii) The lowest yield strength determined by the tensile tests.

* * * * *

10. Section 192.121 would be revised to read as follows:

§ 192.121 Design of plastic pipe.

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined in accordance with one of the two following formulas:

$$(1) \quad P = 2S \frac{t}{(D-t)} 0.32$$

or

$$(2) \quad P = \frac{2S}{(SDR-1)} 0.32$$

P = Design pressure, gage, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 23° C (73° F), 38° C (100° F), 49° C (120° F), or 60° C (140° F); for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psi).

T = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

SDR = Standard Dimension Ratio = The ratio of average specified outside diameter to minimum specified wall thickness in accordance with a preferred numbering system.

11. Section 192.123 would be amended by revising paragraph (b) to read as follows:

§ 192.123 Design limitations for plastic pipe.

* * * * *

(b) * * *

(1) Below minus 40° C (−40° F); or

(2) Above the following applicable temperatures:

(i) For thermoplastic pipe, the temperature at which the long-term hydrostatic strength used in the design formula under § 192.121 is determined. However, if the pipe was manufactured before May 18, 1978 and its long-term hydrostatic strength was determined at 23° C (73° F), it may be used at temperatures up to 38° C (100° F).

(ii) For reinforced thermosetting plastic pipe, 66° C (150° F).

* * * * *

§ 192.145 [Amended]

12. Section 192.145 would be amended by changing the word "value" to read "valve" in paragraph (l).

13. Section 192.179 would be amended by revising paragraph (a) introductory text to read as follows:

§ 192.179 Transmission line valves.

(a) Unless otherwise approved in writing by the Administrator, upon an operator's demonstrating an equivalent level of safety, each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows:

* * * * *

14. Section 192.203 would be amended by revising paragraph (b)(2) to read as follows:

§ 192.203 Instrument, control, and sampling pipe and components.

* * * * *

(b) * * *

(2) Except for a pressure regulator that can be isolated by other valves from its source of pressure, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

* * * * *

15. Section 192.227 would be amended by revision paragraph (b) and adding paragraph (c) to read as follows:

§ 192.227 Qualification of welders.

* * * * *

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of appendix C to this part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of appendix C to this part as a requirement of the qualifying test.

(c) Except as provided in § 192.229(c), after initial qualification, a welder may not perform welding unless:

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under paragraph (b) of this section; or

(2) Within the preceding 7½ calendar months, but at least twice each calendar year, the welder has had—

(i) A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

(ii) For welders who work only on service lines 2 inches or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in section III of appendix C to this part.

16. Section 192.229 would be amended by revising paragraph (c) to read as follows:

§ 192.229 Limitations on welders.

* * * * *

(c) A welder qualified under § 192.227(a) may not weld on pipe to be operated at a pressure that produces a hoop stress at or above 20 percent of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in appendix A may weld but my not requalify under that earlier edition.

17. Section 192.241 would be amended by revising paragraph (c) to read as follows:

§ 192.241 Inspection and test of welds.

* * * * *

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. The operator may elect to evaluate a girth weld flaw, except a crack, that is unacceptable under section 6 of API Standard 1104, in accordance with the criteria of the appendix (alternative Acceptance Standards for Girth Welds) to API Standard 1104.

18. Section 192.243 would be amended by revising paragraph (d)(4) to read as follows:

§ 192.243 Nondestructive testing.

* * * * *

(d) * * *

(4) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

* * * * *

19. Section 192.281 would be amended by redesignating paragraph (c)(3) as paragraph (c)(4) and adding paragraph (c)(3) to read as follows:

§ 192.281 Plastic pipe.

(c) * * *

(3) An electrofusion joint must be joined utilizing the equipment and techniques expressly prescribed by the fitting manufacturer.

* * * * *

20. Section 192.283 would be amended by revising paragraph (a)(1)(ii) and adding paragraph (a)(1)(iii) to read as follows:

§ 192.283 Plastic pipe; qualifying joining procedures.

(a) * * *

(1) * * *

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; or

(iii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Tests) or paragraph 9.2 (Sustained Pressure Test) or paragraph 9.3 (Tensile Strength Test) or paragraph 9.4 (Joint Crush Test) of ASTM F1055;

* * * * *

21. Section 192.317 would be amended by revising paragraph (a) to read as follows:

§ 192.317 Protection from hazards.

(a) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

* * * * *

22. Section 192.319 would be amended by revising paragraph (c) to read as follows:

§ 192.319 Installation of pipe in a ditch.

* * * * *

(c) All offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet of water must be installed so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

23. Section 192.321 would be amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 192.321 Installation of plastic pipe.

(a) Plastic pipe must be installed below ground level unless otherwise permitted by paragraph (g) of this section.

* * * * *

(g) Uncased plastic pipe may be temporarily installed above ground level subject to all of the following:

(1) The duration of the installation must not exceed 30 days.

(2) The location of the pipe must be such that it is unlikely to be damaged by external forces, otherwise the pipe must be protected from such damage.

(3) The pipe must have adequate resistance for the exposure to ultraviolet light and for the exposure to high and low temperatures.

(4) The pipe must not be used in subsequent above ground level installations.

24. Section 192.327 would be amended by revising paragraph (e) to read as follows:

§ 192.327 Cover.

* * * * *

(e) All pipe which is installed in a navigable river, stream, or harbor must have a minimum cover of 48 inches in soil or 24 inches in consolidated rock, and all pipe installed in any offshore location under water less than 12 feet deep, as measured from mean low tide, must have a minimum cover of 36 inches

in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom. However, less than the minimum cover is permitted in accordance with paragraph (c) of this section for pipe other than pipe in the Gulf of Mexico and its inlets.

25. Section 192.455 would be amended by revising paragraphs (a)(2) and (f)(1) to read as follows:

§ 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.

(a) * * *

(2) It must have a cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation, within one-year after completion of construction.

* * * * *

(f) * * *

(1) For the size fitting to be used, an operator can show by test, investigation, or experience in the area of application that adequate corrosion resistance is provided by the alloy composition; and

* * * * *

26. Section 192.475 would be amended by revising paragraph (c) to read as follows:

§ 192.475 Internal corrosion control: General.

* * * * *

(c) Gas containing more than 0.25 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

27. Section 192.485 would be amended by adding paragraph (c) to read as follows:

§ 192.485 Remedial measures: Transmission lines.

* * * * *

(c) In paragraphs (a) and (b) of this section, the strength of the pipe based on actual remaining wall thickness may be determined by the procedure in ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines. Application of the procedure in the B31G Manual shall apply to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the B31G Manual.

28. Section 192.491 would be revised to read as follows:

§ 192.491 Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records and maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) For each test, survey, or inspection required by this subpart, each operator shall maintain a record in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. For each test, survey, or inspection required by §§ 192.465 (a) and (e) and § 192.475(b), records must be retained for as long as the pipeline remains in service. All other records required by this paragraph must be retained for at least 5 years.

29. Section 192.553 would be amended by revising paragraph (d) to read as follows:

§ 192.553 General requirements.

* * * * *

(d) *Limitation on increase of maximum allowable operating pressure.* Except as provided in § 192.555(c), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if one or more of the variables necessary to determine the design pressure for the new segment under § 192.619(a)(1) is unknown, the design pressure may be determined by:

(1) Testing the segment in accordance with ASME B31.8, appendix N, to produce a stress equal to the yield strength, and

(2) Applying to not more than 80 percent of the first pressure that produces a yielding the appropriate factors in §§ 192.619(a)(2)(ii) and 192.619(a)(2)(iii).

§ 192.607 [Removed]

30. Section 192.607 would be removed and reserved.

§ 192.611 [Amended]

31. In § 192.611, paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), paragraph (a)(3)(ii) would be redesignated as paragraph (b), and paragraph (a)(3)(iii) would be redesignated as paragraph (a)(3)(ii) respectively.

32. Section 192.614 would be amended by revising paragraphs (b)(2) introductory text and (c)(2) as follows:

§ 192.614 Damage prevention program.

* * * * *

(b) * * *

(2) Provide for general notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program:

* * * * *

(c) * * *

(2) Pipelines in a Class 3 location defined by § 192.5(b)(3)(ii) that are marked in accordance with § 192.707.

* * * * *

33. Section 192.619 would be amended by adding paragraph (a)(2)(iii), and removing paragraphs (a)(4) and (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(4) and revising it.

§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

(a) * * *

(2) * * *

(iii) For steel pipe operated at a 100 p.s.i.g. or more, the pressure determined from the table above further reduced by a factor of 0.60 for furnace butt welded pipe and by 0.80 for furnace lap welded pipe.

* * * * *

(4) The pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressure.

* * * * *

34. Section 192.625 would be amended by revising paragraph (f) to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(f) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Operators of master meter systems may comply with this requirement by:

(1) Receiving written verification from their gas source that gas odorization levels meet the required levels; and

(2) Conducting periodic "sniff" tests, at the outer extremities of the system, to confirm that the gas contains odorant.

35. Section 192.705 would be amended by adding paragraph (c) to read as follows:

§ 192.705 Transmission lines: Patrolling

* * * * *

(c) Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

36. Section 192.709 would be revised to read as follows:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) The date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for the useful life of the pipe.

(b) The date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least 1 year.

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

37. Section 192.721 would be amended by revising paragraph (b) to read as follows:

§ 192.721 Distribtuion systems: Patrolling.

* * * * *

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—

(1) In Class 1 and 2 locations, at intervals not exceeding 7½ months, but at least twice each calendar year; and

(2) In Class 3 and 4 locations, at intervals not exceeding 4½ months, but at least four times each calendar year.

38. Appendix A would be amended by adding paragraph II.B. (12) to read as follows:

Appendix A—Incorporated by Reference

* * * * *

II. * * *

B. * * *

(12) ASTM Specification F1055 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing" (F1055–87).

* * * * *

39. Appendix A would be amended by adding paragraphs II.D. (3) and (4) to read as follows:

Appendix A—Incorporated by Reference

* * * * *

II. * * *

D. * * *

(3) ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

(4) ASME B31.8 "Gas Transmission and Distribution Piping Systems" (1989 with Addenda A, B, C).

* * * * *

Issued in Washington, DC on August 21, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 92–20517 Filed 8–28–92; 8:45 am]

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Monday
August 31, 1992

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15, 30, 31, and 52
Federal Acquisition Regulation (FAR); Cost Accounting Standards and FAR Availability on Electronic Bulletin Board and CD-ROM; Interim Rule and Notice

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 30, 31, and 52

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending FAR part 30 based on the Cost Accounting Standards Board's recodification of the Cost Accounting Standards in 48 CFR Chapter 99. The Cost Accounting Standards (FAR subpart 30.4) are removed. FAR subpart 30.6 and the "Administration of Cost Accounting Standards" clause at 52.230-4 are revised to clarify procedures for submission of cost impact proposals. In addition, the clauses at 52.230-1, 52.230-2, 52.230-3, and 52.230-5 have been revised to reflect the recodification of the standards.

DATES: *Effective Date:* August 31, 1992.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 30, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90-12, FAR case 92-18 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-12, FAR case 92-18.

SUPPLEMENTARY INFORMATION:

A. Background

The Cost Accounting Standards Board (CASB) issued a final rule in the **Federal Register** on April 17, 1992, recodifying the Cost Accounting Standards (CAS) at 48 CFR chapter 99 (57 FR 14148). The CAS were previously in both 48 CFR part 30 and 4 CFR parts 331 through 420. The CASB final rule was based upon the notice of proposed rulemaking published in the **Federal Register** on June 12, 1991 (56 FR 26968), where public comments were invited.

This rule removes the CAS rules and regulations (FAR subpart 30.3) and the standards (FAR subpart 30.4). For ease of reference, Appendix B of the FAR of the FAR loose-leaf edition is added, which incorporates the CAS and CAS rules and regulations recodified by the CASB in title 48 of the Code of Federal Regulations, chapter 99. Appendix B is provided for convenience; the official codified CAS are in 48 CFR chapter 99. FAR part 30 was revised based on the recodification and cross references were updated. A further review of cross references in the FAR and DFARS requiring revision as a result of the recodification is in the process.

FAR revisions originally proposed in FAR case 89-34, Cost Impact Proposals, were incorporated into this interim rule. Those revisions clarify the procedures for submission of cost impact proposals and the authority of the Administrative Contracting Officer (ACO) to withhold a portion of payments when the contractor does not submit the cost impact proposal in a timely manner. A proposed rule was issued June 16, 1989 (54 FR 25686). Revisions as a result of comments on that proposed rule are incorporated into this interim rule.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small business are exempt from the application of the Cost Accounting Standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAR Case 92-18), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection associated with the Cost Accounting Standards were approved by the Office of Management and Budget and assigned Control Number 0348-0051.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to make the Federal Acquisition Regulation consistent with the Cost Accounting Standards Board's final rule recodifying Cost Accounting Standards, which was effective upon publication April 17, 1992.

List of Subjects in 48 CFR Parts 15, 30, 31, and 52

Government procurement.

Dated: August 24, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90-12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-12 is effective August 31, 1992.

Dated: August 19, 1992.

Eleanor R. Spector,

Director, Defense Procurement, Department of Defense.

Dated: August 21, 1992.

Richard H. Hopf III,

Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 12, 1992.

Don G. Bush,

Assistant Administrator for Procurement, NASA.

Therefore, 48 CFR parts 15, 30, 31, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 15, 30, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.805-3 [Amended]

2. Section 15.805-3 is amended in paragraph (d) by removing the reference

"Part 30" and inserting in its place "48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition)".

15.812-1 [Amended]

3. Section 15.812-1 is amended in the first sentence of paragraph (a) by removing the reference "Part 30" and inserting in its place "48 CFR Chapter 99".

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

4. Part 30 is revised to read as follows:

30.000 Scope of part.

Subpart 30.1—General

30.101 Cost Accounting Standards.
30.102 Cost Accounting Standards Board Publication.

Subpart 30-2—CAS Program Requirements

30.201 Contract requirements.
30.201-1 CAS applicability.
30.201-2 Types of CAS coverage.
30.201-3 Solicitation provisions.
30.201-4 Contract clauses.
30.201-5 Waiver.
30.202 Disclosure requirements.
30.202-1 General requirements.
30.202-2 Impracticality of submission.
30.202-3 Amendments and revisions.
30.202-4 Privileged and confidential information.
30.202-5 Filing disclosure Statements.
30.202-6 Responsibilities.
30.202-7 Determinations.
30.202-8 Subcontractor Disclosure Statements.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Subpart 30.4—Cost Accounting Standards [Reserved]

Subpart 30.5—[Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.
30.602 Changes to disclosed or established cost accounting practices.
30.602-1 Equitable adjustments for new or modified standards.
30.602-2 Noncompliance with CAS requirements.
30.602-3 Voluntary changes.
30.603 Subcontract administration.

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR chapter 99 (appendix B, FAR loose-leaf edition)) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-1(b), for these and other exemptions).

Subpart 30.1—General

30.101 Cost Accounting Standards.

(a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this part 30 for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to Public Law 100-679, shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR chapter 99), all of which are hereby incorporated in this part 30.

(c) Appendix B to the FAR loose-leaf edition contains: Part I, CAS and CASB Rules and Regulations; Part II, nonregulatory preambles to the CAS; Part III, preambles to CAS Rules and Regulations; Part IV, preambles published under the FAR system; and Part V, CASB Rules and Procedures (administrative).

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

30.102 Cost Accounting Standards Board Publication.

Copies of the CASB Standards and Regulations are printed in title 48 of the Code of Federal Regulations, chapter 99, and may be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Washington, DC, ordering desk at area code (202) 783-3238.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

Title 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subpart 9903.201-1, describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with subpart 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-2.

30.201-1 CAS applicability.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), Subpart 9903.201-1.

30.201-2 Types of CAS coverage.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), Subpart 9903.201-2.

30.201-3 Solicitation provisions.

The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR chapter 99 (appendix B, FAR loose-lead edition), Subpart 9903.201.

30.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.201-1), the contract is subject to modified coverage (see 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.201-2), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $10 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause at 52.230-3 requires the contractor to comply with 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subparts 9904.401 and 9904.402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be

performed substantially in the United Kingdom (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-1(b)(12)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-5, Administration of Cost Accounting Standards, in contracts containing either the clause prescribed in paragraph (a) of this subsection, or the clause prescribed in paragraph (c) of this subsection.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

30.201-5 Waiver.

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.201-5.

30.202 Disclosure requirements.

30.202-1 General requirements.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-1.

30.202-2 Impracticality of submission.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.202-2.

30.202-3 Amendments and revisions.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.202-3.

30.202-4 Privileged and confidential information.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-4.

30.202-5 Filing Disclosure Statements.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-5.

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted. (Also see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subparts 9903.201-3 and 9903.202.)

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* The contract auditor shall conduct an initial review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the auditor and contracting officer. The notice of adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the auditor shall conduct a detailed compliance review to determine whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.602-2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with part 31 shall be processed separately, in accordance with normal administrative practices.

30.202-8 Subcontractor Disclosure Statements.

(a) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall provide such determination to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-2.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Note: See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.3.

Subpart 30.4—Cost Accounting Standards [Reserved]

Note: See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), part 9904.

Subpart 30.5 [Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days of the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see subpart 42.2).

30.602 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.305. The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractors that:

(a) the Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material and

(b) the contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.602-1 Equitable adjustments for new or modified standards.

(a) *New or modified standards.* (1) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the ACO.

(2) Contracts and subcontracts containing the clause at 52.230-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing the clause at 52.230-2 is awarded on or after the effective date of the new or modified standard.

(3) Contracting officers shall encourage contractors to submit to the ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the CASB.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The ACO shall invite contracting offices to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more. At the conclusion of negotiations, the ACO shall—

(i) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(2) If the parties fail to agree on the cost or price adjustment, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

30.602-2 Noncompliance with CAS requirements.

(a) *Determination of noncompliance.* (1) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(2) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(3) If the contractor agrees with the initial finding of noncompliance, the ACO shall review the contractor submissions required by paragraph (a) of the clause at 52.230-5, Administration of Cost Accounting Standards.

(4) If the contractor disagrees with the initial noncompliance finding, the ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. The ACO shall notify the contractor and the auditor in writing of the determination. If the ACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, shall be followed.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall request that the contractor submit a cost impact proposal within the time specified in the clause at 52.230-5, Administration of Cost Accounting Standards.

(2) Upon receipt of the cost impact proposal, the ACO shall then follow the procedures in 30.602-1(c)(1). In accordance with the clause at 52.230-2, Cost Accounting Standards, the ACO shall include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest shall be computed from the date of overpayment to the time the adjustment is effected. If

the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest under 52.230–2 should be computed pursuant to Public Law 100–679.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall notify the contractor and request agreement as to the cost or price adjustment together with any applicable interest as computed in accordance with 30.602–2(c)(2). The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal, as provided in the clause at 52.233–1, Disputes.

(3) If the ACO determines that there is no material increase in costs as a result of the noncompliance, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action shall be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230–2, Cost Accounting Standards, and/or the clause at 52.230–3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.602–3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosure statement or cost accounting practices.

(2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the Government.

(b) *Accounting changes.* (1) The clause at 52.230–5, Administration of Cost Accounting Standards, requires the contractor to notify the ACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202–7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered.

(2) The ACO shall then follow the procedures in 30.602–1(c)(1).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is appropriate (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal, as provided in the clause at 52.233–1, Disputes.

30.603 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the ACO cognizant of the subcontractor shall make the determination and advise the ACO cognizant of the prime contractor of next higher tier subcontractor of his decision. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.201–2, 31.203, 31.205–6, 31.205–10, 31.205–11, 31.205–18, 31.205–19, 31.205–24, 31.205–38 [Amended]

5–6. In the list below, for each section indicated in the left column, remove the citation indicated in the middle column from wherever it appears in the section, and insert the citation indicated in the right column:

Section	Remove	Add
31.201–2(b)	Part 30	48 CFR 9903
31.203(e)	30.406	48 CFR 9904.406
31.205–6(j)(2)	30.412 (2 instances)	48 CFR 9904.412 (2 instances)
31.205–6(j)(2)	30.413	48 CFR 9904.413
31.205–6(j)(3)(i)(A)	30.412–40(a)(1)	48 CFR 9904.412–40(a)(1)
31.205–6(j)(3)(i)(A)	30.412–50(c)(3)	48 CFR 9904.412–50(c)(3)
31.205–6(j)(3)(i)(B)	30.412	48 CFR 9904.412
31.205–6(j)(3)(i)(B)	30.413	48 CFR 9904.413
31.205–6(j)(3)(ii)	30.412–50(a)(7)	48 CFR 9904.412–50(a)(7)
31.205–6(j)(3)(iii)	30.413–50(c)(5)	48 CFR 9904.413–50(c)(5)
31.205–6(j)(5)(i)	30.412–50(c)(3)	48 CFR 9904.412–50(c)(3)

Section	Remove	Add
31.205-6(k)(2)	30.415	48 CFR 9904.415
31.205-6(k)(3)	30.415	48 CFR 9904.415
31.205-10(a)(1)(ii)	30.414	48 CFR 9904.414
31.205-10(a)(2)(i)	30.414	48 CFR 9904.414
31.205-10(b)(1)(ii)	30.417	48 CFR 9904.417
31.205-10(b)(2)(i)(A)	30.417	48 CFR 9904.417
31.205-11(b)	30.409 (4 instances)	48 CFR 9904.409 (4 instances).
31.205-11(m)	30.404 (2 instances)	48 CFR 9904.404 (2 instances).
31.205-18(b)	30.420	48 CFR 9904.420
31.205-18(b)(1)	30.420	48 CFR 9904.420
31.205-18(b)(2)	30.420 (3 instances)	48 CFR 9904.420 (3 instances).
31.205-18(b)(2)	4 CFR 420.50(e)(2) (2 instances).	48 CFR 9904.420-50(e)(2) (2 instances).
31.205-18(b)(2)	4 CFR 420.50(f)(2) (2 instances).	48 CFR 9904.420-50(f)(2) (2 instances).
31.205-18(c)(1)(i)	30.420	48 CFR 9904.420
31.205-19(a)	30.416	48 CFR 9904.416
31.205-19(a)(3)(i)	30.416 (3 instances)	48 CFR 9904.416 (3 instances).
31.205-19(a)(3)(i)	4 CFR 416.50(a)(2)(ii)	48 CFR 9904.416-50(a)(2)(ii)
31.205-19(a)(3)(i)	30.416-50(a)(3)(ii)	48 CFR 9904.416-50(a)(3)(ii)
31.205-19(c)	30.416	48 CFR 9904.416
31.205-24(b)	30.404	48 CFR 9904.404
31.205-38(e)	30.405	48 CFR 9904.405

31.205-6 [Corrected]

7. Section 31.205-6 is corrected by removing the introductory text of paragraph (j)(3)(i).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 52.230-1 through 52.230-5 are revised and section 52.203-6 is removed to read as follows:

52.230-1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201-3, insert the following provisions:

Cost Accounting Standards Notices and Certification (Aug 1992)

Note: This notice does not apply to small businesses or foreign governments. This notice is in four parts, identified by Roman numerals I through IV.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 48 CFR parts 9903 and 9904, except for those contracts which are exempt as specified in 48 CFR, Subpart 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS-1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $10 million in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR, Subpart 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a review certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $10 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Exemption for Contracts of $500,000 or Less

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of 48 CFR, Subpart 9903.201–1(b)(2).

III. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR, Subpart 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR, Subpart 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $10 million in awards of CAS-covered prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $10 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $10 million or more.

IV. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

(End of provision)

52.230–2 Cost Accounting Standards.

As prescribed in 30.201–4(a), insert the following clause:

Cost Accounting Standards (Aug 1992)

(a) Unless the contract is exempt under 48 CFR, Subparts 9903.201–1 and 9903.201–2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202–1 through 9903.202–5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR part 9904 or a CAS rule or regulation in 48 CFR part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201–1.

(End of clause)

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201–4(b)(1), insert the following clause:

Disclosure and Consistency of Cost Accounting Practices (Aug 1992)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR, Subpart 9904.402, Consistency in Allocating Costs Incurred fo the Same Purpose, in effect on the date of

award of this contract as indicated in 48 CFR, part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, subparts 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, subpart 9903.201–6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, subpart 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards" set forth in FAR 52.230–2, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201–1.

(End of clause)

52.230–4 Consistency in Cost Accounting Practices.

As prescribed in 30.201–4(c), insert the following clause:

Consistency in Cost Accounting Practices (Aug 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS–1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

52.230–5 Administration of Cost Accounting Standards

As prescribed in 30.201–4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (Aug 1992)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230–2, Cost Accounting Standard, or with subparagraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230–2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practice):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards, shall identify each additional standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4) (ii) or (iii) of the clause at 52.230–2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clause at FAR 52.230–2, Cost Accounting Standards, and FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230–2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230–3, Disclosure and

Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230–2 or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230–3.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

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GENERAL SERVICES ADMINISTRATION

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Dated: August 26, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

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Reader Aids

Federal Register

Vol. 57, No. 169

Monday, August 31, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

34061-34200.....3
34201-34494.....4
34495-34664.....5
34665-34850.....6
34851-35454.....7
35455-35744.....10
35745-35980.....11
35981-36350.....12
36351-36586.....13
36587-36886.....14
36887-37078.....17
37079-37392.....18
37393-37682.....19
37683-37868.....20
37869-38236.....21
38237-38402.....24
38403-38576.....25
38577-38742.....26
38743-39096.....27
39097-39350.....28
39351-39596.....31

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title

3 CFR

Proclamations:
6352 (See USTR Notice of Aug. 28).....39271
6463.....36349
6464.....36887
6465.....39095
6466.....39097

Executive Orders:
8597 (Revoked by PLO 6939 of July 22, 1992).....35467
12674 (See OGE final rule of May 7, 1992).....35006
12731 (See OGE final rule of May 7, 1992).....35006
12813.....34851

Administrative Orders:
Presidential Determinations:
No. 85-14 of July 1, 1985 (See Presidential Determination No. 92-41 of August 17, 1992)
No. 92-37 of August 3, 1992.....36587
No. 92-38 of August 11, 1992.....38577
No. 92-41 of August 17, 1992.....38235
(See DOT notice of August 18).....38342

4 CFR

Ch. III.....34167

5 CFR

531.....37393
532.....35745
575.....37393, 37394
831.....38743
2635.....35006

Proposed Rules:
297.....35491

7 CFR

28.....34495
210.....38579
215.....38579
220.....38579
246.....34500
301.....37683
302.....37079
354.....37684
400.....34665
718.....34201
719.....34201
720.....34201
905.....39099
907.....34203
908.....34203
910.....39103
911.....39099
915.....39099
921.....39099
922.....39099
923.....39099
924.....39099
926.....39105
927.....39107
929.....38745, 39109
931.....39107
932.....35745, 36351
944.....35747, 36354
945.....38403
946.....38404
947.....38587, 39099
948.....39105
953.....39105
958.....39099
967.....38405
981.....38407, 38408
982.....38410, 39099
985.....39099
987.....39110
989.....34206
993.....38412
997.....39112
998.....34061, 38413
1007.....39114
1098.....39351
1209.....34349, 35004
1413.....34201
1414.....34201
1435.....37685
1806.....36589
1863.....36589
1925.....36589
1941.....37400
1942.....35627
1944.....36589
1945.....36589
1951.....36589
1955.....36589
1962.....36589
1965.....36589

Proposed Rules:
58.....35492
68.....39140
300.....34349, 37732
318.....35627
319.....34349, 37732, 37735
401.....38783
906.....34268
910.....39368
915.....38445
948.....34269, 38446
993.....38621
1001.....36609
1002.....36609

1004.....36609
1005.....36609
1007.....36609
1011.....36609
1030.....36609
1033.....36536
1036.....36536
1040.....36609
1044.....36609
1046.....36609
1049.....36536
1065.....36609, 39140, 39141
1068.....36609
1079.....36609
1093.....36609
1094.....36609
1096.....36609
1097.....36609
1098.....36609
1099.....36609
1106.....36609
1108.....36609
1124.....34694, 39142
1126.....36609, 39143
1131.....36609
1135.....34694
1137.....39145
1138.....36609
1139.....39146
1209.....36610
1413.....34087
1942.....37736

8 CFR

103.....34506
240.....34506

9 CFR

77.....37686, 37869
78.....37080, 37081, 37687
91.....37689, 39352
92.....37689
94.....37081
101.....38751
102.....38758
112.....38751
113.....38751
303.....34174
318.....37869
327.....36889
381.....34174, 37869

Proposed Rules:

51.....37736
92.....37737
317.....39332
318.....35505, 38448
381.....38450, 39332

10 CFR

19.....38588
20.....38588, 39353
50.....35455, 39353
220.....36890
300.....36890
320.....36890

Proposed Rules:

Ch. I.....34886, 37737
20.....36611
50.....34666, 36909
100.....39371
140.....36909
171.....39421

11 CFR

110.....36344
200.....34508

Proposed Rules:

110.....36023

12 CFR

201.....34064
204.....38415, 38417
226.....34676
229.....36593, 36599
545.....37083
571.....37083
584.....35456
614.....38237
615.....38250
619.....38237
1102.....35004, 36356
1617.....35728
1680.....37400

Proposed Rules:

3.....35507
34.....36911
203.....36024
208.....35507
220.....37109
225.....35507
325.....35507
552.....37112
563.....36911, 37112
Ch. VII.....34090
741.....34091

13 CFR

121.....37690

Proposed Rules:

121.....38452
125.....37909

14 CFR

13.....34511
21.....34208–34213, 34511, 35981, 37406, 37876
23.....35981, 37876
25.....34208–34213, 34511, 34681, 37406
39.....34065–34073, 34215–34220, 35982, 36891–36901, 37408, 37691, 37872, 37874, 38251–38269, 38430, 38432, 38760
71.....34074, 35983, 36601, 37409, 37877, 37878, 38434–38437, 38962
91.....34614
93.....37308
95.....36361
97.....34221, 34512, 35984, 35986, 38271, 38273
121.....34681
135.....34681
201.....38761
202.....38761
204.....38761
291.....38761
302.....38761

Proposed Rules:

Ch. I.....37480
1.....35888
21.....34270, 36027, 36029, 36375
25.....34270, 36375
27.....36027
29.....36029
39.....36439, 36614, 36917–36928, 37118, 37480–37488, 37738, 37914, 37915, 38623–38632, 38784–38802, 39371, 39372
61.....35888
71.....34271, 34530, 34531, 34809, 36031, 36378, 36616, 37489–37492, 38456, 38634, 38724, 39156, 39157
73.....37493
91.....35888, 38724
121.....35888, 38718
125.....35888
135.....35888
141.....35888
142.....35888

15 CFR

903.....35749

Proposed Rules:

280.....37032
799.....36929
801.....38635

16 CFR

260.....36363
305.....36902
1115.....34222
1116.....34230

Proposed Rules:

19.....34532
23.....34532
245.....34532
453.....34532
1116.....34272
1145.....36929
1210.....36932
1700.....34274

17 CFR

4.....34853
30.....36369, 38437
32.....36369
200.....36442
202.....39358
210.....36442
228.....36442
229.....36442
230.....36442
239.....36442, 37084
240.....36442
249.....36442
260.....36442

Proposed Rules:

1.....34533
200.....35070, 35202, 38352
201.....35070, 38352
202.....35070, 35431, 35442, 38352
210.....35070, 38352
228.....36502
229.....35070, 35202, 38352
230.....35070, 35202, 36502, 38352
232.....35070, 38352
239.....34701, 35070, 35202, 36502, 38352
240.....34701, 35070, 35202, 36502, 38352
249.....35070, 35202, 36502, 38352
250.....35431
259.....35070
260.....35070, 35442, 36502, 38352
269.....35431, 38352
270.....34701, 34726, 35202
274.....34701, 35202

18 CFR

271.....34682
284.....36128, 38590

Proposed Rules:

2.....35525
284.....35525, 35766

19 CFR

4.....35750
18.....38274
19.....37692
24.....35458
113.....37692
122.....38274
144.....37692
145.....37702
207.....34820

Proposed Rules:

10.....37591
101.....34809, 35530
146.....35530
151.....37917
175.....39158

20 CFR

10.....35752
416.....35459

21 CFR

14.....35461
155.....34244, 37591
169.....34245, 37591
176.....34865
178.....35462, 37867
510.....35988, 38441
520.....35988, 37318
522.....37318
524.....37318
526.....37318
529.....37318
536.....37318
539.....37318
540.....37318
544.....37318
546.....37318
548.....37318
555.....37318
558.....34515, 37410, 38441
1220.....38770
1308.....36371, 36372

Proposed Rules:

20.....36617
101.....37190
131.....38095
182.....37738
184.....37738
310.....38568
341.....34733–34735
1301.....36439
1304.....36439

22 CFR

215.....38276

Proposed Rules:

51.....39159

23 CFR

1212.....35989

Proposed Rules:

750.....34168

24 CFR

4.....34246
25.....37085
103.....39115
202.....37085
889.....36338

890.....36330
905.....37085
Proposed Rules:
92.....34640
207.....37119
213.....37119
220.....37119
221.....37119
231.....37119
232.....37119
234.....37119
242.....37119
244.....37119
290.....34834
886.....34834
2003.....38804

25 CFR

Proposed Rules:
515.....34809
519.....34349
522.....34349
523.....34349
524.....34349
531.....37656
533.....37656
535.....37656
537.....37656
539.....37656
556.....34349
558.....34349
571.....34809
577.....34809

26 CFR

1.....36001, 37189, 38281, 38594, 38595, 39359
5f.....36001
48.....39421
301.....36691, 37085, 37189, 38960
602.....36001, 38281, 38595
Proposed Rules:
1.....34092, 34736, 34740, 34886, 35536, 37495, 39374, 39379
5h.....34736, 34740
301.....36031, 38457, 39379
602.....39379

27 CFR

4.....37591
Proposed Rules:
17.....39528
19.....39528
70.....39528
170.....39528
194.....39528
197.....39528
250.....39528

28 CFR

0.....38771
40.....38773
524.....34662
571.....34662

29 CFR

541.....37666
1910.....35630, 38600
1926.....35630
2619.....36602
2676.....36603
Proposed Rules:
541.....37678
1910.....34192, 36964, 37126, 37591
1915.....36964, 37126
1917.....37126
1918.....37126
1926.....34656, 36964, 37126
1928.....37126

30 CFR

70.....34683
75.....34683
902.....37410
904.....37423
916.....37430
917.....37086
926.....37436
934.....37702, 37707
935.....37093, 37096
943.....37447, 37459
944.....37461
Proposed Rules:
18.....39036
48.....38289
75.....38289, 39041
77.....38289
250.....36032, 39421
718.....35960
720.....35960
901.....37497
913.....37127
914.....37498
916.....37132
920.....37133, 37134
935.....37136, 37138

31 CFR

312.....34684
317.....34684
357.....38773
Proposed Rules:
210.....34650
257.....37139

32 CFR

191.....35755
292.....38774
701.....37100
706.....35463, 35464

33 CFR

100.....34075, 37710, 38283, 38606, 39116, 39117, 39359
117.....34868, 37711, 37879, 37881, 38608, 38778, 39118, 39360
135.....36314
136.....36314
137.....36314
155.....36222
157.....36222
165.....35465, 35466, 35755, 39120, 39360
222.....35757
Proposed Rules:
117.....37918, 37920, 38638, 39381
154.....37920
165.....34741, 36034
179.....36034

34 CFR

8.....34646
200.....39066
300.....37652
303.....37652
668.....39088
Proposed Rules:
76.....38740
80.....38740
Ch. VI.....38639
400.....36720
401.....36720
402.....36720
403.....36720
405.....36720
406.....36720
407.....36720
408.....36720
409.....36720
410.....36720
411.....36720
412.....36720
413.....36720
414.....36720
415.....36720
416.....36720
417.....36720
418.....36720
419.....36720
421.....36720
422.....36720
423.....36720
424.....36720
425.....36720
426.....36720
427.....36720
428.....36720
Proposed Rules:
99.....35964
280.....36324
316.....34620
318.....34620
319.....34620
366.....36617
555.....34488

35 CFR

133.....37066

36 CFR

Proposed Rules:
251.....36618

37 CFR

1.....38190
2.....38190
Proposed Rules:
1.....36034, 38640
2.....38640
3.....38640
10.....36034

38 CFR

1.....38609
2.....38609
3.....34517, 36439, 38609
4.....38609
6.....38609
8.....38609
13.....38609
17.....38609
18.....38609
20.....38442
21.....35628, 38609, 38611, 38613
36.....37712, 38609
Proposed Rules:
3.....34536, 38095
21.....38458

39 CFR

111.....37882
232.....36903, 38443
Proposed Rules:
3001.....39160

40 CFR

52.....34249-34251, 35758, 35759, 36004, 36603, 37100, 37465, 37470, 38615
148.....37194, 39275
156.....38102
170.....38102
180.....34517, 34518, 36004, 37474
185.....36005
260.....37194, 38558, 39275
261.....37194, 37284, 37884, 37886, 38558, 39275
262.....37194, 39275
264.....37194, 38558, 39275
265.....37194, 38558, 39275
266.....38558
268.....37194, 39275
270.....37194, 39275
271.....37194, 37284, 39275
281.....34519
302.....37284
372.....37888
721.....34252
Proposed Rules:
50.....35542
52.....35769, 35771, 36040, 37743, 38641, 38650
60.....37744, 38651
122.....35774
170.....38167, 38175
180.....34537, 36042-36046
261.....36866, 37921, 37927
268.....35940
271.....35940
300.....34742, 38289
308.....34742
721.....34281-34283, 37499

41 CFR

101-14.....37713
101-42.....39121
101-43.....39121
101-44.....39121
101-45.....34253, 39121
101-46.....39121
101-48.....39121
101-49.....39121

42 CFR

403.....38616
405.....36006
406.....36006
409.....36006
410.....36006
411.....36006
412.....36006
413.....36006
418.....36006
420.....35760
433.....38778
489.....36006
493.....35760
Proposed Rules:
52c.....37745
52e.....37502
100.....36878
431.....39278
435.....36968
436.....36968
442.....39278
488.....39278
489.....39278

43 CFR

3100.....35968
5460.....37475
5470.....37475
Public Land Orders:
6932.....35627
6938.....34520
6939.....35467
6940.....35468
6941.....34685
6942.....38782
Proposed Rules:
12.....34755
5400.....37936
5460.....37936
5470.....37936

44 CFR

64.....34685, 34688, 37714
65.....37715, 37717
67.....37718
361.....34868
Proposed Rules:
67.....37747

45 CFR

98.....34352
99.....34352
255.....34434
257.....34434
801.....36018
1180.....36903
Proposed Rules:
1224.....35775

46 CFR

28.....34188
30.....36222
32.....36222
70.....36222
90.....36222
172.....36222
272.....34689
298.....34690
514.....36248
515.....36248
520.....35761
550.....34076, 35761, 36248
580.....34076, 35761, 36248
581.....36248
Proposed Rules:
571.....38807

47 CFR

0.....38444
1.....38284
2.....38285
22.....34077, 37105
43.....34520
61.....37729
64.....34253, 37106
73.....34077, 34078, 34263, 34692, 34872, 35763, 36018–36021, 36906, 37888, 38286, 39362–39364
76.....35468
80.....34261
90.....34692, 37730
95.....36372
Proposed Rules:
Ch. I.....35776
1.....36047
2.....37755, 38459
15.....36049, 37755, 37939, 38459
21.....34889
22.....34889
23.....34889
25.....34889, 37940, 37941
73.....34092, 34284, 34285, 36047, 36050, 36051, 36971, 38291, 38292, 38652, 39382–39384
74.....36378
80.....38292
94.....34093
97.....34285, 37758

48 CFR

15.....39586
30.....39586
31.....39586
52.....39586
219.....38286
252.....38286
332.....35472
333.....35472
501.....37889
503.....37889
505.....37889
519.....37889
532.....37889
552.....37889
570.....37889
2509.....34881
2527.....34882
9900.....34167
9902.....34167
9903.....34078, 34167
9904.....34078, 34167
Proposed Rules:
803.....37759
852.....37759
1819.....34094
1852.....34094
Ch. 20.....37140
5415.....36051
5446.....37142
5452.....36051, 37142

49 CFR

Ch. VI.....39328
107.....37900
171.....37900
571.....37902
1004.....38444
1020.....39364
1063.....35763
1109.....35628
Proposed Rules:
171.....36694
172.....34542, 36694
173.....36694
178.....36694
180.....36694
192.....39572
225.....34756
234.....36054
Ch. III.....37392
392.....37504
395.....37504
397.....39522, 39533
571.....34539, 38462, 38654
1002.....35557
1003.....37761
1039.....34890, 37763, 37941
1141.....34891
1160.....37761
1162.....37761
1166.....37761
1180.....34891, 35559, 39385
1201.....38810
1207.....36972
1249.....36972
1262.....38810

50 CFR

17.....35473, 37478
20.....38202, 39072
215.....34081
227.....36906
630.....34264
646.....39365
661.....34085, 34883, 34884, 35764, 36021, 36607, 36608, 37906
663.....34266, 35765
672.....34884, 35004, 35487, 35489, 35765, 37478, 37906
675.....35487, 35489, 37731, 37906, 39137, 39138
683.....36907
Proposed Rules:
17.....34095–34100, 34892, 36380, 37507–37515, 37941, 39173
20.....35446, 38215
216.....34101
218.....34101
222.....34101
226.....36626
611.....35627
625.....34107, 36055
642.....36972, 38810
662.....38657
663.....34757
685.....35627

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 4312/P.L. 102–344
Voting Rights Language Assistance Act of 1992. (Aug. 26, 1992; 106 Stat. 921; 2 pages) Price: $1.00

H.R. 5481/P.L. 102–345
FAA Civil Penalty Administrative Assessment Act of 1992. (Aug. 26, 1992; 106 Stat. 923; 5 pages) Price: $1.00

S. 544/P.L. 102–346
Animal Enterprise Protection Act of 1992. (Aug. 26, 1992; 106 Stat. 928; 2 pages) Price: $1.00

S. 807/P.L. 102–347
To permit Mount Olivet Cemetery Association of Salt Lake City, Utah, to lease a certain tract of land for a period of not more than 70 years. (Aug. 26, 1992; 106 Stat. 930; 1 page) Price: $1.00

S. 1770/P.L. 102–348
To convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes. (Aug. 26, 1992; 106 Stat. 931; 2 pages) Price: $1.00

S. 1963/P.L. 102–349
To amend section 992 of title 28, United States Code, to provide a member of the United States Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of Congress. (Aug. 26, 1992; 106 Stat. 933; 1 page) Price: $1.00

S. 2079/P.L. 102–350
Marsh-Billings National Historical Park Establishment Act. (Aug. 26, 1992; 106 Stat. 934; 3 pages) Price: $1.00

S. 3001/P.L. 102–351
To amend the Food Stamp Act of 1977 to prevent a reduction in the adjusted cost of the thrifty food plan during fiscal year 1993, and for other purposes. (Aug. 26, 1992; 106 Stat. 937; 1 page) Price: $1.00

S. 3112/P.L. 102–352
Public Health Service Act Technical Amendments Act. (Aug. 26, 1992; 106 Stat. 938; 3 pages) Price: $1.00

S. 3163/P.L. 102–353
Prescription Drug Amendments of 1992. (Aug. 26, 1992; 106 Stat. 941; 3 pages) Price: $1.00

H.R. 2549/P.L. 102–354
Administrative Procedure Technical Amendments Act of 1991. (Aug. 26, 1992; 106 Stat. 944; 3 pages) Price: $1.00

H.R. 2926/P.L. 102–355
To amend the Act of May 17, 1954, relating to the Jefferson National Expansion Memorial to authorize increased funding for the East Saint Louis portion of the Memorial, and for other purposes. (Aug. 26, 1992; 106 Stat. 947; 2 pages) Price: $1.00

H.R. 2977/P.L. 102–356
Public Telecommunications Act of 1992. (Aug. 26, 1992; 106 Stat. 949; 9 pages) Price: $1.00

H.R. 3795/P.L. 102-357

To amend title 28, United States Code, to establish 3 divisions in the Central Judicial District of California. (Aug. 26, 1992; 106 Stat. 958; 2 pages) Price: $1.00

H.R. 4437/P.L. 102-358

To authorize funds for the implementation of the settlement agreement reached between the Pueblo de Cochiti and the United States Army Corps of Engineers under the authority of Public Law 100-202. (Aug. 26, 1992; 106 Stat. 960; 2 pages) Price: $1.00

H.R. 5560/P.L. 102-359

To extend for one year the National Commission on Time and Learning, and for other purposes. (Aug. 26, 1992; 106 Stat. 962; 2 pages) Price: $1.00

H.R. 5623/P.L. 102-360

To waive the period of congressional review for certain District of Columbia Acts. (Aug. 26, 1992; 106 Stat. 964; 1 page) Price: $1.00

H.R. 5688/P.L. 102-361

Bankruptcy Judgeship Act of 1992. (Aug. 26, 1992; 106 Stat. 965; 2 pages) Price: $1.00

H.J. Res. 411/P.L. 102-362

To designate the week of September 13, 1992, through September 19, 1992, as "National Rehabilitation Week". (Aug. 26, 1992; 106 Stat. 967; 2 pages) Price: $1.00

H.J. Res. 507/P.L. 102-363

To approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania. (Aug. 26, 1992; 106 Stat. 969; 1 page) Price: $1.00

Last List August 20, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	¹ Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	25.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	* Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	19.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	² Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	[6]Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–013–00118–4)	20.00	July 1, 1991
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
*800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
*200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–013–00131–1)	10.00	July 1, 1991
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–013–00133–8)	26.00	July 1, 1991
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
*39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
61–80	(869–013–00141–9)	14.00	July 1, 1991
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
260–299	(869–013–00147–8)	31.00	July 1, 1991
300–399	(869–013–00148–6)	13.00	July 1, 1991
400–424	(869–013–00149–4)	23.00	July 1, 1991
425–699	(869–013–00150–8)	23.00	[7] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[8] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–017–00155–4)	11.00	[9] July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–013–00164–8)	22.00	Oct. 1, 1991
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
80–End	(869–013–00182–6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–013–00184–2)	19.00	Oct. 1, 1991
2 (Parts 201–251)	(869–013–00185–1)	13.00	Dec. 31, 1991
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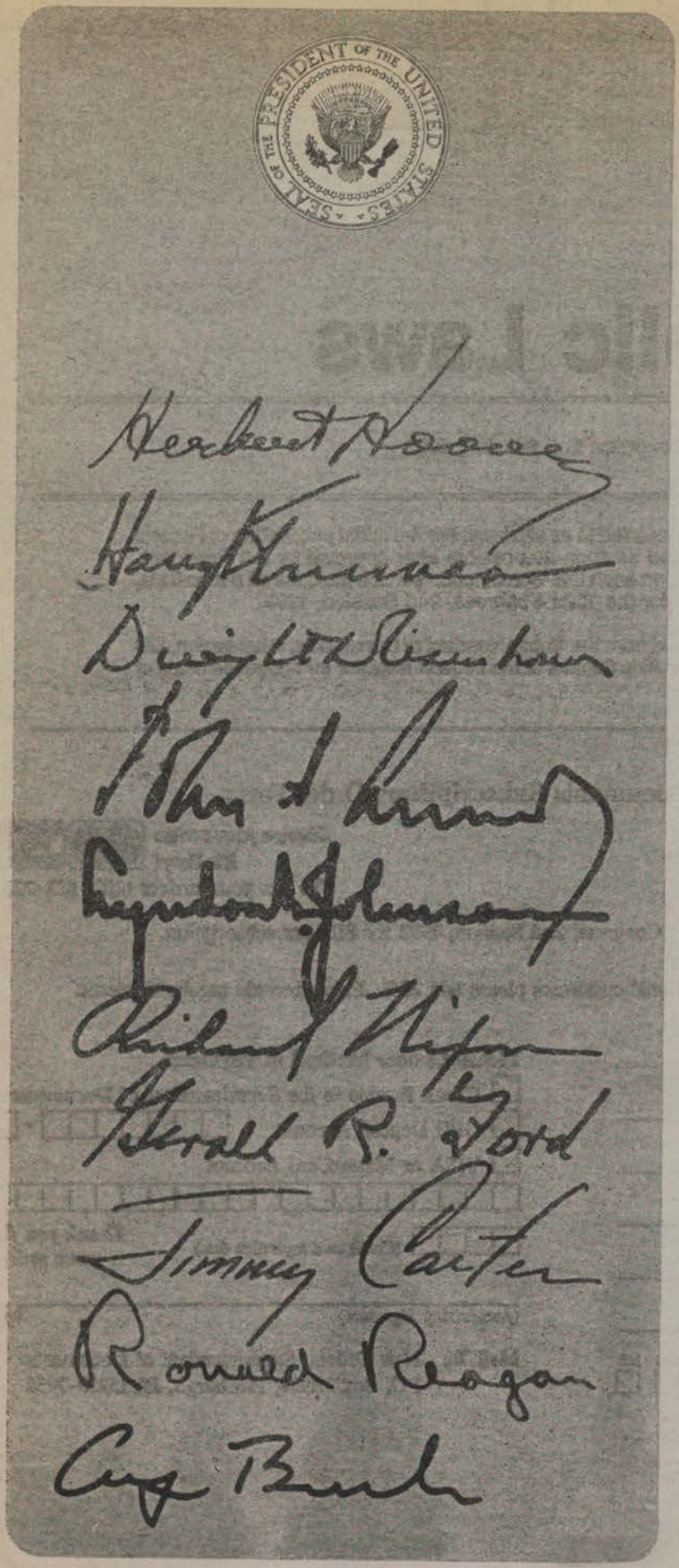

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